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Thursday
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Presidential Documents

Title 3—

The President

Memorandum of July 8, 1998

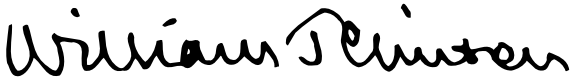
Delegation of Authority Under Section 1406(b) of the National Defense Authorization Act for Fiscal Year 1998

Memorandum for the Secretary of Defense

By the authority vested in me by the Constitution and the laws of the United States of America, including section 301 of title 3 of the United States Code, I hereby delegate to the Secretary of Defense the functions conferred upon the President by section 1406(b) of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85).

The authority delegated by this memorandum may be redelegated not lower than the Under Secretary level.

You are authorized and directed to publish this memorandum in the **Federal Register**.



THE WHITE HOUSE,
Washington, July 8, 1998.

[FR Doc. 98–19144
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Rules and Regulations

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

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 98–072–1]

Gypsy Moth Generally Infested Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the gypsy moth quarantine and regulations by adding Indiana to the list of States quarantined because of gypsy moth. We are also adding Steuben County in Indiana to the list of generally infested areas. As a result, the interstate movement of certain articles from Steuben County will be restricted. This action is necessary to prevent the artificial spread of gypsy moth to noninfested States.

DATES: Interim rule effective July 16, 1998. Consideration will be given only to comments received on or before September 14, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98–072–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 98–072–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Ms. Coanne E. O'Hern, Operations Officer, Domestic and Emergency Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247; or e-mail: cohern@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The gypsy moth, *Lymantria dispar* (Linnaeus), is a destructive pest of forest and shade trees. The gypsy moth regulations (contained in 7 CFR 301.45 through 301.45–12 and referred to below as the regulations) quarantine certain States because of the gypsy moth and restrict the interstate movement of certain articles from generally infested areas in the quarantined States to prevent the artificial spread of the gypsy moth.

In accordance with § 301.45–2 of the regulations, generally infested areas are, with certain exceptions, those States or portions of States in which a gypsy moth general infestation has been found by an inspector, or each portion of a State that the Administrator deems necessary to regulate because of its proximity to infestation or its inseparability for quarantine enforcement purposes from infested localities. Less than an entire State will be designated as a generally infested area only if: (1) The State has adopted and is enforcing a quarantine or regulation that imposes restrictions on the intrastate movement of regulated articles that are substantially the same as those that are imposed with respect to the interstate movement of such articles; and (2) the designation of less than the entire State as a generally infested area will be adequate to prevent the artificial interstate spread of infestations of the gypsy moth.

Designation of Areas as Generally Infested Areas

In § 301.45, paragraph (a) lists States quarantined because of gypsy moth. Section 301.45–3 lists generally infested areas in the quarantined States. We are amending 301.45(a) of the regulations by adding Indiana to the list of States quarantined because of gypsy moth. We are also amending § 301.45–3 of the regulations by adding Steuben County, IN, to the list of generally infested areas. As a result, the interstate movement of regulated articles from Steuben County will be restricted.

We are taking this action because, in cooperation with the States, the United States Department of Agriculture conducted surveys that detected all life stages of the gypsy moth in Steuben County. Based on these surveys, we determined that reproducing populations exist at significant levels in this area. Eradication of these populations is not considered feasible because this area is immediately adjacent to areas currently recognized to be generally infested and therefore subject to continued reinfestation.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary because of the possibility that the gypsy moth could be spread artificially to noninfested areas of the United States, where it could cause economic losses due to defoliation of susceptible forest and shade trees.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This action amends the list of generally infested areas under the gypsy moth quarantine and regulations by adding Steuben County, IN. Immediate action is necessary to prevent the artificial spread of gypsy moth to noninfested areas of the United States.

This emergency situation makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. If we determine that this rule would have a significant economic impact on a substantial

number of small entities, then we will discuss the issues raised by section 604 of the Regulatory Flexibility Act in our Final Regulatory Flexibility Analysis.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

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

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

§ 301.45 [Amended]

2. In § 301.45, paragraph (a) is amended by adding ''Indiana,'' immediately before ''Maine,''.

3. In § 301.45–3, paragraph (a) is amended by adding an entry for Indiana, in alphabetical order, to read as follows:

§ 301.45–3 Generally infested areas.

(a) * * *

Indiana

Steuben County. The entire county.

* * * * *

Done in Washington, DC, this 10th day of July 1998.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–19001 Filed 7–15–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 931

[Docket No. FV98–931–1 IFR]

Fresh Bartlett Pears Grown in Oregon and Washington; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule decreases the assessment rate established for the Northwest Fresh Bartlett Pear Marketing Committee (Committee) under Marketing Order No. 931 for the 1998–99 and subsequent fiscal periods from $0.03 to $0.02 per standard box handled. The Committee is responsible for local administration of the marketing order which regulates the handling of fresh Bartlett pears grown in Oregon and Washington. Authorization to assess fresh Bartlett pear handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The 1998–99 fiscal period began July 1 and ends June 30. The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective July 17, 1998. Comments received by September 14, 1998, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax (202) 205–6632. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 141 and Order No. 931 (7 CFR part 931), regulating the handling of fresh Bartlett pears grown in Oregon and Washington hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

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

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

later than 20 days after the date of the entry of the ruling.

This rule decreases the assessment rate established for the Committee for the 1998–99 and subsequent fiscal periods from $0.03 to $0.02 per standard box handled.

The fresh Bartlett pear marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of fresh Bartlett pears. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1997–98 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on May 28, 1998, and unanimously recommended 1998–99 expenditures of $97,000 and an assessment rate of $0.02 per standard box of fresh Bartlett pears handled. In comparison, last year's budgeted expenditures were $111,441. The assessment rate of $0.02 is $0.01 less than the rate currently in effect and will reduce the financial burden on handlers. At the current rate of $0.03 per standard box and estimated 1998 fresh Bartlett pear shipments of 3,000,000 standard boxes, the projected reserve on June 30, 1999, would exceed the level the Committee believed to be adequate to administer the program. The Committee discussed lower assessment rates, but decided that an assessment rate of less than $0.02 would not generate the income necessary to administer the program with an adequate reserve.

Major expenses recommended by the Committee for the 1998–99 fiscal period include $38,878 for salaries, $5,323 for office rent, and $4,062 for health insurance. Budgeted expenses for these items in 1997–98 were $48,454, $8,187, and $4,956, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of fresh Bartlett pears. With fresh Bartlett pear shipments for 1998–99 estimated at 3,000,000 standard boxes, the $0.02 per standard box assessment rate should provide $60,000 in assessment income. Income derived from handler assessments, along with funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order (approximately one fiscal year's operational expenses; § 931.42).

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

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1998–99 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

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 initial regulatory flexibility analysis.

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

There are approximately 1,800 producers of fresh Bartlett pears in the production area and approximately 65 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000 and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of fresh Bartlett pear producers and handlers may be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 1998–99 and subsequent fiscal periods from $0.03 to $0.02 per standard box handled. The Committee unanimously recommended 1998–99 expenditures of $97,000 and an assessment rate of $0.02 per standard box of fresh Bartlett pears handled. In comparison, last year's budgeted expenditures were $111,441. The assessment rate of $0.02 is $0.01 less than the rate currently in effect. At the rate of $0.03 per standard box and estimated 1998 fresh Bartlett pear shipments of 3,000,000 standard boxes, the projected reserve on June 30, 1999, would exceed the level the Committee believed to be adequate to administer the program. The assessment rate reduction would also lessen the financial burden on handlers. The Committee decided that an assessment rate of less than $0.02 would not generate the income necessary to administer the program with an adequate reserve.

Major expenses recommended by the Committee for the 1998–99 fiscal period include $38,878 for salaries, $5,323 for office rent, and $4,062 for health insurance. Budgeted expenses for these items in 1997–98 were $48,454, $8,187, and $4,956, respectively.

With fresh Bartlett pear shipments for 1998–99 estimated at 3,000,000 standard boxes, the $0.02 rate of assessment should provide $60,000 in assessment income. Income derived from handler assessments, along with funds from the Committee's authorized reserve and miscellaneous income, will be adequate to cover budgeted expenses. Funds in the reserve (estimated to be $33,000 at the end of the 1997–98 fiscal period) will be kept within the maximum permitted by the order (approximately one fiscal year's operational expenses; § 931.42).

Recent price information indicates that the grower price for the 1998–99 marketing season will range between $7.59 and $12.72 per standard box of fresh Bartlett pears. Therefore, the estimated assessment revenue for the 1998–99 fiscal period as a percentage of total grower revenue will range between 0.26 and 0.16 percent.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on

all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the fresh Bartlett pear industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 28, 1998, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action will not impose any additional reporting or recordkeeping requirements on either small or large fresh Bartlett pear handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule. After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This action reduces the current assessment rate for fresh Bartlett pears; (2) the 1998–99 fiscal period began on July 1, 1998, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable fresh Bartlett pears handled during such fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 931

Marketing agreements, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 931 is amended as follows:

PART 931—FRESH BARTLETT PEARS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 931 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 931.231 [Amended]

2. Section 931.231 is amended by removing the words ''July 1, 1997,'' and adding in their place the words ''July 1, 1998,'' and by removing ''$0.03'' and adding in its place ''$0.02.''

Dated: July 10, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–19000 Filed 7–15–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

[Docket No. FV98–948–1 IFR]

Irish Potatoes Grown in Colorado; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule decreases the assessment rate established for the Colorado Potato Administrative Committee, San Luis Valley Office (Area II) (Committee) under Marketing Order No. 948 for the 1998–99 and subsequent fiscal periods from $0.0030 to $0.0015 per hundredweight of potatoes handled. The Committee is responsible for local administration of the marketing order which regulates the handling of Irish potatoes grown in Colorado. Authorization to assess potato handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The 1998–99 fiscal period begins September 1 and ends August 31. The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective July 17, 1998. Comments received by September 14, 1998, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax (202) 205–6632. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 97 and Order No. 948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

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

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

This rule decreases the assessment rate established for the Committee for the 1998–99 and subsequent fiscal periods from $0.0030 to $0.0015 per hundredweight of potatoes handled.

The Colorado potato marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Colorado Area II potatoes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

In Colorado, both a State and a Federal marketing order operate simultaneously. The State order authorizes promotion, including paid advertising, which the Federal order does not. All expenses in this category are financed under the State order. The jointly operated programs consume about equal administrative time and the two orders continue to split administrative costs equally.

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

The Committee met on May 21, 1998, and recommended, by a nine to one vote, 1998–99 expenditures of $66,895 and an assessment rate of $0.0015 per hundredweight of potatoes. The Committee member voting no objected to the amount being budgeted for the executive director's salary, but had no problem with the total amount budgeted or the reduction in the assessment rate. In comparison, last year's budgeted expenditures were $63,329. The assessment rate of $0.0015 is $0.0015 less than the rate currently in effect. The Committee voted to lower the assessment rate and use some of the funds in its operating reserve in order to bring the reserve closer to the amount it believes necessary to administer the program. The decrease would reduce the financial burden on handlers as prices for San Luis Valley potatoes have been extremely low the past two seasons. Over production of the 1996 fall crop and unusually cold weather during the 1997 fall crop growing season resulted in major financial disasters within the San Luis Valley potato industry. The Committee discussed various assessment rates, but decided that an assessment rate of less than $0.0015 would not generate the income necessary to administer the program with an adequate reserve.

Major expenses recommended by the Committee for the 1998–99 fiscal period include $37,210 for salaries, $10,850 for office expenses, which include telephone, supplies, and postage, and $5,250 for building maintenance, which includes insurance and utilities. Budgeted expenses for these items in 1997–98 were $35,579, $9,500, and $5,250, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Colorado Area II potatoes. Potato shipments for the year are estimated at 16,500,000 hundredweight which should provide $24,750 in assessment income. Income derived from handler assessments, along with funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve ($124,903 as of September 1, 1997) will be kept within the maximum permitted by the order (less than approximately two fiscal periods' expenses; § 948.78).

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

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1998–99 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

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 initial regulatory flexibility analysis.

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

There are approximately 285 producers of Colorado Area II potatoes in the production area and approximately 100 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000 and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Colorado Area II potato producers and handlers may be classified as small entities.

The rule decreases the assessment rate established for the Committee and collected from handlers for the 1998–99 and subsequent fiscal periods from $0.0030 to $0.0015 per hundredweight of potatoes handled. The Committee by a nine to one vote recommended 1998–99 expenditures of $66,895 and an assessment rate of $0.0015 per hundredweight of potatoes handled. The Committee member voting no objected to the amount being budgeted for the executive director's salary but

had no problem with the total amount budgeted or the reduction in the assessment rate. In comparison, last year's budgeted expenditures were $63,329. The assessment rate of $0.0015 is $0.0015 less than the rate currently in effect. The Committee voted to lower the assessment rate and use some of the funds in its operating reserve in order to bring the reserve closer to the amount it believes necessary to administer the program. The decrease would reduce the financial burden on handlers as prices for San Luis Valley potatoes have been extremely low the past two seasons. Overproduction of the 1996 fall crop and unusually cold weather during the 1997 fall crop growing season resulted in major financial disasters within the San Luis Valley potato industry. The Committee discussed various assessment rates, but decided that an assessment rate of less than $0.0015 would not generate the income necessary to administer the program with an adequate reserve.

Major expenses recommended by the Committee for the 1998–99 fiscal period include $37,210 for salaries, $10,850 for office expenses, which include telephone, supplies, and postage, and $5,250 for building maintenance which includes insurance and utilities. Budgeted expenses for these items in 1997–98 were $35,579, $9,500, and $5,250, respectively.

With Colorado Area II potato shipments for 1998–99 estimated at 16,500,000 hundredweight, the $0.0015 rate of assessment should provide $24,750 in assessment income. Income derived from handlers assessments, along with funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve ($124,903 as of September 1, 1997) will be kept within the maximum permitted by the order (less than approximately two fiscal periods' expenses; § 948.78).

Recent price information indicates that the grower price for the 1998–99 marketing season will range between $1.60 and $6.15 per hundredweight of Colorado potatoes. Therefore, the estimated assessment revenue for the 1998–99 fiscal period as a percentage of total grower revenue will range between 0.0900 and 0.0243 percent.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the Colorado Area II potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 21, 1998, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action will not impose any additional reporting or recordkeeping requirements on either small or large Colorado Area II potato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

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

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This action reduces the current assessment rate for Colorado Area II potatoes; (2) the 1998–99 fiscal period begins on September 1, 1998, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable Colorado Area II potatoes handled during such fiscal period; (3) handlers are aware of this action which was recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 948 is amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR part 948 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 948.216 [Amended]

Section 948.216 is amended by removing the words ''September 1, 1996,'' and adding in their place the words ''September 1, 1998,'' and by removing ''$0.0030'' and adding in its place ''$0.0015.''

Dated: July 10, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–18998 Filed 7–15–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–117–AD; Amendment 39–10661; AD 98–15–10]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB SF340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes, that requires modification of the detachable center inlet component of the air intake system of the engine. 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 fuel and/or oil that may be present in the nacelle from entering the air intake system of the engine, which could result in a possible engine fire.

DATES: Effective August 20, 1998.

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

ADDRESSES: The service information referenced in this AD may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the Federal Aviation

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

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes was published in the **Federal Register** on May 20, 1998 (63 FR 27694). That action proposed to require modification of the detachable center inlet component of the air intake system of the engine.

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 135 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 modification, and that the average labor rate is $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $16,200, 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, 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:

98–15–10 SAAB Aircraft AB (Formerly SAAB Fairchild): Amendment 39–10661. Docket 98–NM–117–AD.

Applicability: Model SAAB SF340A and Model SAAB 340B series airplanes, as listed in SAAB Service Bulletin 340–30–073, dated August 18, 1997; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 fuel and/or oil that may be present in the nacelle from entering the air intake system of the engine, which could result in a possible engine fire, accomplish the following:

(a) Within 2 years after the effective date of this AD, modify the detachable center inlet component of the air intake system of the engine, in accordance with Saab Service Bulletin 340–30–073, dated August 18, 1997, including Attachment 1, dated March 6, 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, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

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

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

(d) The modification shall be done in accordance with SAAB Service Bulletin 340–30–073, dated August 18, 1997, including Attachment 1, dated March 6, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Swedish airworthiness directive 1–119, dated August 21, 1997.

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

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

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–18774 Filed 7–15–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–149–AD; Amendment 39–10663; AD 98–15–12]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42 and ATR72 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Aerospatiale Model ATR42 and ATR72 series airplanes, that requires a one-time inspection of the electromagnetic interference (EMI) filter capacitors and electronic cards of the cabin air recirculation fans to detect damage. This amendment also requires replacement of damaged components with new or serviceable parts, and modification of the cabin air assembly fans. 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 overheating and consequent failure of the EMI filter capacitors, which could result in emission of toxic smoke and fumes throughout the airplane, and consequent adverse effects on flight crew and passengers.

DATES: Effective August 20, 1998.

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

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

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR42 and ATR72 series airplanes was published in the **Federal Register** on May 20, 1998 (63 FR 27688). That action proposed to require a one-time inspection of the electromagnetic interference (EMI) filter capacitors and electronic cards of the cabin air recirculation fans to detect damage. That action also proposed to require replacement of damaged components with new or serviceable parts, and modification of the cabin air assembly fans.

Comments

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

Explanation of Changes Made to This Final Rule

In the applicability paragraph of the proposal, the FAA inadvertently referenced Avions de Transport Regional Service Bulletin ATR42–21–0069, dated February 5, 1998, and Avions de Transport Regional Service Bulletin ATR72–21–1048, dated February 5, 1998, as Aerospatiale Service Bulletins. Therefore, the FAA has revised the final rule accordingly.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator or increase the scope of the AD.

Interim Action

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

Cost Impact

The FAA estimates that 81 airplanes of U.S. registry will be affected by this AD.

It will take approximately 3 work hours per airplane to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $14,580, or $180 per airplane.

It will take approximately 2 work hours per airplane to accomplish the required modification at an average labor rate of $60 per work hour. The cost of the required parts will be minimal. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $9,720, or $120 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–15–12 Aerospatiale: Amendment 39–10663. Docket 98–NM–149–AD.

Applicability: Model ATR42–300, –320, and –500 series airplanes, as listed in Avions de Transport Regional Service Bulletin ATR42–21–0069, dated February 5, 1998; and Model ATR72–101, –102, –201, –202, –211, –212, and –212A series airplanes, as listed in Avions de Transport Regional Service Bulletin ATR72–21–1048, dated February 5, 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 overheating and consequent failure of the electromagnetic interference (EMI) filter capacitors, which could result in emission of toxic smoke and fumes throughout the airplane, and consequent adverse effects on flight crew and passengers, accomplish the following:

(a) Within 11 months after the effective date of this AD, perform a one-time visual inspection to detect damage of the EMI filter capacitors and electronic cards of the cabin air recirculation fan of the right and left air-conditioning packs, in accordance with Avions de Transport Regional Service Bulletin ATR42–21–0069, dated February 5, 1998 (for Model ATR42 series airplanes), or ATR72–21–1048, dated February 5, 1998 (for Model ATR72 series airplanes), as applicable.

(1) If no discrepancy is detected, prior to further flight, modify and re-identify each fan assembly, in accordance with the applicable service bulletin.

(2) If any discrepancy is detected, prior to further flight, replace the damaged components with new or serviceable components, and modify and re-identify the fan assembly, in accordance with the applicable service bulletin.

Note 2: Avions de Transport Regional Service Bulletin ATR42–21–0069, dated February 5, 1998 (for Model ATR42 series airplanes), and ATR72–21–1048, dated February 5, 1998 (for Model ATR72 series airplanes), reference EG&G Rotron Service Bulletin 011232500–21–1, dated December 12, 1997, as an additional source of service information for accomplishment of the modification.

(b) As the effective date of this AD, no person shall install on any airplane a cabin air-conditioning recirculation Rotron fan having part number (P/N) 011232500 Amend. A, or P/N 011494500 Amend. A, on the left or right air-conditioning pack.

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch ANM–116.

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

(e) The actions shall be done in accordance with Avions de Transport Regional Service Bulletin ATR42–21–0069, dated February 5, 1998, or Avions de Transport Regional Service Bulletin ATR72–21–1048, dated February 5, 1998, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directives 98–070–074(B) and 98–073–037(B), both dated February 11, 1998.

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

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

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–18772 Filed 7–15–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–230–AD; Amendment 39–10658; AD 98–15–07]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Mystere-Falcon 50 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Dassault Model Mystere-Falcon 50 series airplanes, that requires installation of a reinforcement fitting at the junction of the baggage floor and frame 35 on both the left- and right-hand sides of the airplane. 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 fatigue cracking in the subject area, which could result in reduced structural integrity of the airframe.

DATES: Effective August 20, 1998.

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

ADDRESSES: The service information referenced in this AD may be obtained from Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Dassault Model Mystere-Falcon 50 series airplanes was published in the **Federal Register** on August 5, 1997 (62 FR 42077). That action proposed to require installation of a reinforcement fitting at the junction of the baggage floor and frame 35 on both the left- and right-hand sides of the airplane.

Comments

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

Request To Revise Cost Impact Information

One commenter requests that the FAA's estimate of the number of airplanes of U.S. registry affected by the proposed AD be revised from 26 to 18 in the cost impact paragraph of the AD. The commenter states that only 18 airplanes of U.S. registry would be affected by the proposed AD because

Avions Marcel Dassault-Breguet Aviation (AMD–BA) Service Bulletin F50–122 (F50–53–2), dated June 25, 1986, has already been accomplished for the remaining airplanes. Based on this additional information received since issuance of the proposed AD, the FAA concurs with the commenter's request, and has revised the cost impact information, below, to reflect this information.

One commenter identifies a typographical error in the Explanation of Relevant Service Information section of the proposed AD. The date of AMD–BA Service Bulletin F50–163 (F50–00–8), dated April 10, 1986, was incorrectly specified as April 10, 1996. The FAA acknowledges that an inadvertent typographical error appeared in the proposed AD, and that the correct date of the service bulletin is April 10, 1986. However, since the Explanation of Relevant Service Information section of the preamble to the proposed AD is not restated in the final rule, no change to the final rule is necessary.

Explanation of Changes Made to This Final Rule

In the proposal, the FAA inadvertently omitted the word 'cycle' in references to the number of flight cycles specified for appropriate compliance times for accomplishment of the requirements of this AD. The final rule has been revised throughout paragraph (a) to specify ''flight cycles'' for those compliance times.

Conclusion

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

Cost Impact

The FAA estimates that 26 Dassault Model Mystere-Falcon 50 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 50 work hours per airplane to accomplish the required installation, and that the average labor rate is $60 per work hour. Required parts will cost approximately $7,000 per airplane. Based on these figures, the cost impact of the installation required by this AD on U.S. operators is estimated to be $260,000, or $10,000 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. However, the FAA has been advised that the installation required by this AD has already been accomplished on 8 airplanes; therefore, only 18 airplanes of U.S. registry are affected. Therefore, the future economic cost impact of the installation required by this AD on U.S. operators is now only $180,000.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–15–07 Dassault Aviation: Amendment 39–10658. Docket 96–NM–230–AD.

Applicability: Model Mystere-Falcon 50 series airplanes, serial numbers 1 through 49 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 fatigue cracking at the junction of the baggage floor and frame 35, which could result in reduced structural integrity of the airframe, accomplish the following:

(a) Install a reinforcement fitting at the junction of the baggage floor and frame 35 on both the left- and right-hand sides of the airplane, in accordance with Avions Marcel Dassault-Breguet Aviation (AMD–BA) Service Bulletin F50–122 (F50–53–2), dated June 25, 1986, at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For airplanes on which AMD–BA Service Bulletin F50–163 (F50–00–8) has been incorporated as of the effective date of this AD: Prior to the accumulation of 10,000 total flight cycles or within 6 months after the effective date of this AD, whichever occurs later.

(2) For airplanes on which AMD–BA Service Bulletin F50–163 (F50–00–8) has not been incorporated as of the effective date of this AD: Perform the requirements of paragraph (a) of this AD at the time specified in either paragraph (a)(2)(i) or (a)(2)(ii) of this AD, as applicable.

(i) Except for those airplanes identified in paragraph (a)(2)(ii), prior to the accumulation of 14,000 total flight cycles or within 6 months after the effective date of this AD, whichever occurs later.

(ii) If incorporation of AMD–BA Service Bulletin F50–163 (F50–00–8) is accomplished at or after the accumulation of 10,000 total flight cycles and prior to the accumulation of 14,000 total flight cycles: Perform the requirements of paragraph (a) of this AD concurrently with the incorporation of AMD–BA Service Bulletin F50–163 (F50–00–8).

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators

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

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

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

(d) The installation shall be done in accordance with Avions Marcel Dassault-Breguet Aviation (AMD–BA) Service Bulletin F50–122 (F50–53–2), dated June 25, 1986. 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 Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 86–74–5(B), dated June 25, 1986.

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

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

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–18771 Filed 7–15–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–02–AD; Amendment 39–10659; AD 98–15–08]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model BAe 146 and Model Avro 146–RJ Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe 146 and Model Avro 146–RJ series airplanes, that requires repetitive detailed visual inspections of the top wing skins for stress corrosion cracks, damage, or missing surface protective finish of the metallic surfaces; and repair, if necessary. This amendment is prompted by reports of stress corrosion cracks found on the top wing skin during routine inspection on three airplanes. The actions specified by this AD are intended to detect and correct such cracking, which could result in reduced structural integrity of the wing.

DATES: Effective August 20, 1998.

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

ADDRESSES: The service information referenced in this AD may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. 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: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain British Aerospace Model BAe 146 and Model Avro 146–RJ series airplanes was published in the **Federal Register** on June 17, 1997 (62 FR 32701). That action proposed to require repetitive detailed visual inspections of the top wing skins for stress corrosion cracks, damage, or missing surface protective finish of the metallic surfaces, and repair, if necessary.

Consideration of 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.

Components Made of 7150–T651 Aluminum Material

The commenter supports the proposed AD. However, the commenter expresses a concern that other airplane components made from the same material could pose a similar problem. As a result, the commenter requests the FAA to accomplish the following actions:

—Identify any other aircraft components made from the same material.

—Review the inspection criteria and frequency for those applications.

—Ensure that a failure of the material will be detected prior to the failure posing a risk to continued flight safety.

The FAA acknowledges the concerns of the commenter. Based on additional information from the manufacturer, the FAA has determined that the problem is limited to a discrepant production lot of 7150–T651 aluminum material that was produced with the incorrect thickness for the wing skins. In addition, the FAA has determined that no other components made of this aluminum material are affected. In light of this information, the FAA finds that it is unnecessary to take any additional action, and that the actions required by this AD are adequate in order to ensure the continued safety of the fleet.

Explanation of New Service Information

Since the issuance of the proposed AD, the manufacturer issued British Aerospace Service Bulletin SB.57–49, Revision 1, dated June 19, 1997, which replaces British Aerospace Service Bulletin SB.57–49, dated June 4, 1996. Revision 1 reduces the effectivity specified in the previous service bulletin to those airplanes on which 7150–T651 aluminum material from a discrepant production lot was used for the top wing skins. The discrepant material was manufactured with an inappropriate thickness, which causes the wings to be susceptible to early stress corrosion cracking on the top wing skin, and which could result in reduced structural integrity of the airplane wing. However, since the discovery of this problem, subsequent 7150–T651 aluminum material used for the top wing skins has been machined to the appropriate thickness and, as a result, is not susceptible to early stress corrosion cracking. In all other respects, Revision 1 of the service bulletin is essentially the same as the original issue of the service bulletin.

The FAA has reduced the applicability of this final rule to those airplanes having wing skins made from 7150–T651 aluminum material, as specified in British Aerospace Service Bulletin SB.57–49, Revision 1, dated June 19, 1997. In addition, the FAA has revised paragraph (a) of the final rule to require accomplishment of those actions in accordance with either the original service bulletin or Revision 1.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air

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

Cost Impact

The FAA estimates that 12 British Aerospace Model BAe 146 and Model Avro 146–RJ series airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 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 $2,880, or $240 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–15–08 British Aerospace Regional Aircraft (Formerly British Aerospace Regional Aircraft Limited, Avro International Aerospace Division; British Aerospace, PLC; British Aerospace Commercial Aircraft Limited): Amendment 39–10659. Docket 97–NM–02–AD.

Applicability: Model BAe 146 and Model Avro 146–RJ series airplanes, as listed in British Aerospace Service Bulletin SB.57–49, Revision 1, dated June 19, 1997, and having wing skins made from 7150–T651 aluminum; 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 detect and correct stress corrosion cracking in the wing skin, which could result in reduced structural integrity of the wing, accomplish the following:

(a) Within 4 months after the effective date of this AD; and thereafter at intervals not to exceed 4,000 landings or 2 years, whichever occurs first: Perform a detailed visual inspection of the top wing skins to detect stress corrosion cracking, and any damaged or missing surface protective finish that exposes the metallic surfaces, in accordance with British Aerospace Service Bulletin SB.57–49, dated June 4, 1996, or Revision 1, dated June 19, 1997.

(1) If any damaged or missing surface protective finish is detected, and no cracking or corrosion is detected, prior to further flight, reapply the protective finish in accordance with the service bulletin. Repeat the detailed visual inspection, thereafter, at intervals not to exceed 4,000 landings or 2 years, whichever occurs first.

(2) If any cracking is detected, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

Note 2: During the detailed visual inspections of the top wing skins, pay particular attention to the edge of cutouts, skin edges, and attachment bolt holes.

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

(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) Except as provided by paragraph (a)(2) of this AD, the inspections and repairs shall be done in accordance with British Aerospace Service Bulletin SB.57–49, dated June 4, 1996; or British Aerospace Service Bulletin SB.57–49, Revision 1, dated June 19, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in British airworthiness directive 005–06–96, dated June 4, 1996.

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

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

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–18770 Filed 7–15–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–160–AD; Amendment 39–10660; AD 98–15–09]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320–111 and –211 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A320–111 and –211 series airplanes. This action requires repetitive inspections to detect fatigue cracking of the frames of the sliding windows in the cockpit, and repair, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to detect and correct fatigue cracking of the frames of the sliding windows in the cockpit, which could result in reduced structural integrity of the pressure vessel of the fuselage of the airplane.

DATES: Effective July 31, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 31, 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. 97–NM–160–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the 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: 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: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A320–111 and –211 series airplanes. The DGAC advises that, during full-scale fatigue testing, fatigue cracking was found on the frame of a sliding window in the cockpit, at the junction with a doubler. Such fatigue cracking of the frames of the sliding windows in the cockpit, if not corrected, could result in reduced structural integrity of the pressure vessel of the fuselage of the airplane.

Explanation of Relevant Service Information

The manufacturer has issued Airbus Service Bulletin A320–53–1065, dated May 4, 1992. This service bulletin describes procedures for repetitive ultrasonic inspections to detect fatigue cracking around fasteners A, B, and C of the frames of the sliding windows in the cockpit; and repetitive eddy current inspections to detect fatigue cracking around fasteners D and E of the frames of the sliding windows. The service bulletin also specifies that the inspections for fatigue cracking of the frames of the sliding windows should be accomplished only on the left side of certain airplanes, and only on the right side of certain other airplanes. In the case of one airplane, the inspections should be accomplished on both sides of the airplane. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 96–235–088(B), dated October 23, 1996, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to detect and correct fatigue cracking of the frames of the sliding windows in the cockpit, which could result in reduced structural integrity of the pressure vessel of the fuselage of the airplane. This AD requires accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between This Rule and Service Bulletin

Operators should note that, unlike the procedures described in Airbus Service Bulletin A320–53–1065, this amendment would not permit further flight if cracking of the frame of a sliding window in the cockpit is detected. The FAA has determined that, because of the safety implications and consequences associated with such cracking, any subject window frame that is found to be cracked must be repaired prior to further flight.

Operators also should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of repair conditions, this AD requires the repair of those conditions to be accomplished in accordance with a method approved by either the FAA, or the DGAC (or its delegated agent). In light of the type of repair that is required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this AD, a repair approved by either the FAA or the DGAC is acceptable for compliance with this AD.

Cost Impact

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

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 4 work hours (2 work hours for each side of the airplane) to accomplish the required inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD would be $240 per airplane, per inspection cycle.

Determination of Rule's Effective Date

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–160–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–15–09 Airbus Industrie: Amendment 39–10660. Docket 97–NM–160–AD.

Applicability: Model A320–111 and –211 series airplanes, serial numbers 002 through 004 inclusive, and 023; on which Airbus Modification 20473 has not been accomplished; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the frames of the sliding windows in the cockpit, which could result in reduced structural integrity of the pressure vessel of the fuselage of the airplane, accomplish the following:

(a) Prior to the accumulation of 20,000 total flight cycles, or within 2,000 flight cycles after the effective date of this AD, whichever occurs later, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD, in accordance with Airbus Service Bulletin A320–53–1065, dated May 4, 1992.

(1) Perform an ultrasonic inspection to detect fatigue cracking around fasteners A, B, and C of the frame of the sliding window in the cockpit, on the left or right side of the airplane, as applicable.

(2) Perform an eddy current inspection to detect fatigue cracking around fasteners D and E of the frame of the sliding window in the cockpit, on the left or right side of the airplane, as applicable.

(b) If no cracking is detected during the inspections required by paragraph (a) of this AD, repeat the inspections thereafter at intervals not to exceed 13,000 flight cycles.

(c) If any cracking is detected during the inspections required by paragraph (a) of this AD, and the total length of the cracks is less than 20 mm: Prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent). Accomplishment of such repair constitutes terminating action for the inspection requirements of paragraph (a) of this AD.

(d) If any cracking is detected during the inspections required by paragraph (a) of this AD, and the total length of the cracks is 20 mm or greater: Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

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

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

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

(g) The inspections shall be done in accordance with Airbus Service Bulletin A320–53–1065, dated May 4, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 96–235–088(B), dated October 23, 1996.

(h) This amendment becomes effective on July 31, 1998.

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

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–18769 Filed 7–15–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–94–AD; Amendment 39–10657; AD 98–15–06]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320 and Model A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A320 and Model A321 series airplanes, that requires repetitive inspections to verify proper installation of the plain bushings of the upper and lower connection links on the forward and aft passenger/crew doors, and correction of discrepancies. This amendment also requires installation of shouldered bushings on the frame segment used for attachment of the connection links or modification of the frame segment bushing (as applicable), which terminates the repetitive inspection requirements. This amendment is prompted by a report that, during an emergency evacuation of in-service airplanes, the left aft passenger/crew door jammed against the fuselage structure in a nearly closed position due to bushing migration. The actions specified by this AD are intended to prevent jamming of the passenger/crew door, which could delay or impede the evacuation of passengers during an emergency.

DATES: Effective August 20, 1998.

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

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

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A320 and A321 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on February 25, 1997 (62 FR 8408). That action proposed to require repetitive inspections to verify proper installation of the plain bushings of the upper and lower connection links on the forward and aft passenger/crew doors, and correction of discrepancies. That action also proposed to require replacement of the shouldered bushing on the locking mechanism with a new oversized bushing or modification of the frame segment bushing (as applicable), which terminates the repetitive inspection requirements.

Comments

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

Request to Revise Applicability

One commenter, Airbus, requests that the applicability of the supplemental NPRM be revised to specify that the AD applies to (1) airplanes on which Airbus Modification 24497 has not been installed in production; and (2) airplanes on which Airbus Service Bulletin A320–52–1027, Revision 2, dated February 18, 1993, Revision 3, dated December 10, 1993, or Airbus Service Bulletin A320–52–1064, Revision 1, dated September 8, 1995, has not been installed.

Airbus advises that installation of Airbus Modification 22422 in production is not equivalent to accomplishment of Airbus Service Bulletin A320–52–1027. (The applicability of the supplemental NPRM incorrectly equates Modification 22422 to Airbus Service Bulletin A320–52–1027.) The commenter adds that airplanes on which Airbus Service Bulletin A320–52–1027 has been accomplished are not affected by the requirements of the supplemental NPRM. The commenter states further that Airbus Service Bulletin A320–52–1064 must be accomplished on airplanes on which Airbus Modification 22422 was installed in production.

The FAA concurs with the commenter's request. Installation of shouldered bushings on the segment frame is necessary in order to provide a full solution and adequately address the identified unsafe condition. Airbus Modification 22422 installed in production added interference fit plain bushings, in place of plain bushings. However, several occurrences of migration of the bushings were reported on those airplanes having Modification 22422 installed in production. Subsequently, Airbus has developed a further modification of the frame segment bushing, which entails removing the plain bushings and installing shouldered bushings on the frame used for attachment of the connection links. Airbus Modification 24497 accomplishes this installation for airplanes in production, using interference fit shouldered bushings. (For retrofit solutions, installation of the shouldered bushings is accomplished with Loctite sealant rather than interference fit).

Airbus Service Bulletin A320–52–1027 is the retrofit solution equivalent to Modification 24497, to be accomplished on those airplanes in a pre-Modification 22422 configuration. For those airplanes on which Modification 22422 was installed in production, installation of shouldered bushings is also necessary, and is to be accomplished in accordance with the procedures described in Airbus Service Bulletin A320–52–1064. Accomplishment of the retrofit solution described in A320–52–1027 or A320–52–1064, as applicable, would terminate the repetitive inspection requirements of this AD. The FAA has revised the applicability and paragraphs (a), (b), (c), and (d) of the final rule to clarify the effectivity of the AD.

Request to Extend Compliance Time

One commenter requests that the compliance time for accomplishing the initial detailed visual inspection be extended from the proposed 450 flight hours to 460 flight hours, and that the repetitive interval be extended from the proposed 900 flight hours to 920 flight hours. The commenter states that such an extension will allow the inspection to be accomplished during a regularly scheduled ''A'' and ''2A'' check, and thereby eliminate any additional expenses that would be associated with special scheduling. The FAA does not concur. In developing an appropriate compliance time for this action, the

FAA considered the safety implications, parts availability, and normal maintenance schedules for timely accomplishment of the detailed visual inspection. Since maintenance schedules vary from operator to operator, there would be no assurance that the detailed visual inspection will be accomplished during a regularly scheduled ''A'' or ''2A'' check. However, under the provisions of paragraph (e) of the final rule, the FAA may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Correction to the Supplemental NPRM

In paragraph (c) and in the Discussion section of the supplemental NPRM, the FAA made incorrect reference to the modification involving shouldered bushings, which would be required to be accomplished in accordance with Airbus Service Bulletin A320–57–1027, Revision 3, dated December 10, 1993. Although the supplemental NPRM specifies ''replacement of the shouldered bushing on the locking mechanism with a new oversized bushing (Kit No. 521027A02)'', the modification entails installation of shouldered bushings on the frame segment used for attachment of the connection links, as the service bulletin specifies in reference to Kit No. 521027A02. Applicable portions of the preamble and paragraph (c) of this final rule have been revised to correctly describe the installation of shouldered bushings.

Conclusion

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

Cost Impact

The FAA estimates that 94 Airbus Model A320 and Model A321 series airplanes of U.S. registry will be affected by this AD.

It will take approximately 6 work hours per airplane to accomplish the required detailed visual inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the detailed visual inspection required by this AD on U.S. operators is estimated to be $33,840, or $360 per airplane, per inspection cycle.

For certain airplanes, it will take approximately 72 work hours per airplane to accomplish the required modification, at an average labor rate of $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $4,320 per airplane.

For certain other airplanes, it will take approximately 53 work hours per airplane to accomplish the required modification, at an average labor rate of $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $3,180 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–15–06 Airbus Industrie: Amendment 39–10657. Docket 94–NM–94–AD.

Applicability: Model A320 and Model A321 series airplanes, as listed below, certificated in any category:

- On which Airbus Modification 24497 has not been installed in production. Or
- On which Airbus Service Bulletin A320–52–1027, Revision 2, dated February 18, 1993, Revision 3, dated December 10, 1993, or Airbus Service Bulletin A320–52–1064, Revision 1, dated September 8, 1995; has not been accomplished.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent jamming of the passenger/crew door, which could delay or impede the evacuation of passengers during an emergency, accomplish the following:

(a) For Model A320 series airplanes on which Airbus Modification 22422 has *not* been installed in production: Within 450 flight hours after the effective date of this AD, perform a detailed visual inspection to verify proper installation of the plain bushings of the upper and lower connection links on the forward and aft passenger/crew doors, in accordance with Airbus Service Bulletin A320–52–1047, dated April 25, 1994.

(1) If all bushings are installed properly, repeat the inspection thereafter at intervals not to exceed 900 flight hours until the modification required by paragraph (c) of this AD is accomplished.

(2) If any bushing has migrated, prior to further flight, remove the passenger/crew door and visually inspect the bushing to

detect damage, in accordance with the service bulletin.

(i) If the bushing housings are not damaged, prior to further flight, reinstall the bushing in accordance with the service bulletin. Repeat the detailed visual inspections of the bushings thereafter at intervals not to exceed 450 flight hours until the modification required by paragraph (c) of this AD is accomplished.

(ii) If any bushing housing is damaged, prior to further flight, ream the door structure and install an oversize shouldered bushing, in accordance with the service bulletin. If the damage is not completely removed after reaming, prior to further flight, repair the bushing housing in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

(b) For Model A320 and Model A321 series airplanes on which Airbus Modification 22422 has been installed in production: Within 450 flight hours after the effective date of this AD, perform a detailed visual inspection to verify proper installation of the plain bushings of the upper and lower connection links (2 bushings per door), in accordance with Airbus All Operators Telex AOT 52–07, dated July 28, 1994, or Airbus Service Bulletin A320–52–1066, dated March 6, 1995.

(1) If the bushings are installed properly, repeat the detailed visual inspection thereafter at intervals not to exceed 900 flight hours, until the modification required by paragraph (d) of this AD is accomplished.

(2) If any bushing is found to be improperly installed, prior to further flight, modify the frame segment bushings in accordance with Airbus Service Bulletin A320–52–1064, Revision 1, dated September 8, 1995. Accomplishment of the modification constitutes terminating action for the requirements of this AD.

(c) For Model A320 series airplanes on which Airbus Modification 22422 has *not* been installed in production: Within 3,500 flight hours after the effective date of this AD, install shouldered bushings on the frame segment used for attachment of the connection links (Kit No. 521027A02), in accordance with Airbus Service Bulletin A320–52–1027, Revision 3, dated December 10, 1993. Accomplishment of this modification constitutes terminating action for the repetitive inspection requirements of paragraph (a) of this AD.

Note 2: Replacement in accordance with Airbus Service Bulletin A320–52–1027, Revision 2, dated February 18, 1993, is considered acceptable for compliance with the requirements of paragraph (c) of this AD.

(d) For Model A320 and Model A321 series airplanes on which Airbus Modification 22422 has been installed in production: Within 15 months after the effective date of this AD, modify the frame segment bushing in accordance with Airbus Service Bulletin A320–52–1064, Revision 1, dated September 8, 1995. Accomplishment of the modification constitutes terminating action for the repetitive detailed visual inspection requirements of paragraph (b) of this AD.

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

(g) Except for the repair action provided in paragraph (a)(2)(ii), the actions shall be done in accordance with the following Airbus Service Bulletins and All Operators Telex (AOT), which contain the specified list of effective pages:

Service bulletin and AOT referenced and date	Page No.	Rrevision level shown on page	Date shown on page
Service Bulletin A320–52–1047, April 25, 1994	1–15	Original	April 25, 1994.
AOT 52–07, July 28, 1994	1–2	Original	July 28, 1994.
Service Bulletin A320–52–1066, March 6, 1995.	1–13	Original	March 6, 1995.
Service Bulletin A320–52–1064, Revision 1, September 8, 1995.	1–4, 8, 21	1	September 8, 1995.
	5–7, 9–20	Original	November 28, 1994.
Service Bulletin A320–53–1027, Revision 3, December 10, 1993	1–6, 8, 11, 18, 19	3	December 10, 1993.
	37–42		
	7, 12, 14–17, 20–36	1	September 25, 1992
	9, 10	Original	January 30, 1992.
	13	2	February 18, 1993.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directive 93–207–048(B), dated December 8, 1993.

(h) This amendment becomes effective on August 20, 1998.

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

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–18768 Filed 7–15–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–92–AD; Amendment 39–10664; AD 98–15–13]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company 90, 100, 200, and 300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Raytheon Aircraft Company (Raytheon) 90, 100, 200, and 300 series airplanes (formerly known as Beech Aircraft Corporation 90, 100, 200,

and 300 series airplanes). This AD requires: checking the airplane maintenance records from January 1, 1994, up to and including the effective date of this AD, for any MIL–H–6000B fuel hose replacements on the affected airplanes; inspecting any replaced rubber fuel hose for a spiral or diagonal external wrap with a red stripe the length of the hose with 94519 printed along the stripe; and replacing any MIL–H–6000B rubber fuel hose matching this description with an FAA-approved hose having a criss-cross or braided external wrap. This AD was prompted by a report of a product defect by the manufacturer that could cause fuel system blockage and engine stoppage. The actions specified by this AD are intended to prevent fuel flow interruption, which could lead to uncommanded loss of engine power and loss of control of the airplane.

DATES: Effective August 28, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 28, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 625–7043. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–92–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Randy Griffith, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, Room 100, 1801 Airport Rd., Wichita, Kansas 67209; telephone: (316) 946–4145; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Raytheon 90, 100, 200, and 300 series airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 4, 1998 (63 FR 10573). The NPRM proposed to require: replacing all of the MIL–H–6000B rubber fuel hoses in the affected airplanes that were manufactured from January 1, 1994, and after, with an FAA-approved rubber fuel hose that has a criss-cross or braided pattern on the external wrap. For airplanes manufactured prior to January 1, 1994, the proposed AD would require checking the airplane maintenance records from January 1, 1994, up to and including the effective date of the proposed AD, for any MIL–H–6000B rubber fuel hose replacements; and, if a replacement has been made, checking the replacement hose for diagonal or spiral wrap that has a ⅜-inch-wide red or orange-red, length-wise stripe, with the manufacturer's code, 94519, printed periodically along the line in red letters on one side. In the case of the Raytheon Models C90A, B200, and B300 airplanes with this fuel hose installed at the factory, the proposed AD would require replacing the fuel hoses with FAA-approved MIL–H–6000B fuel hoses that have a criss-cross or braided external wrap. Accomplishment of the proposed action as specified in the NPRM would be in accordance with Raytheon Aircraft Mandatory Service Bulletin No. 2718, Rev. 1, Issued: January, 1997, Revised: June, 1997.

The NPRM was the result of a report of a product defect by the manufacturer that could cause fuel system blockage and engine stoppage.

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

The FAA received a comment from the manufacturer, Raytheon Aircraft Company. Raytheon states that the Model C90B listed in the applicability section of the proposed AD should actually be listed as Model C90A because the model number C90B was only used as a designation on certain airplanes for marketing purposes. There are not actually any Raytheon airplanes with the model number C90B.

The FAA concurs and will change the model number in the applicability section of the AD to read:

Model	Serial No.
C90A	LJ–1288, LJ–1295, and LJ–1300 through LJ–1445.

The FAA's Determination

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

Cost Impact

The FAA estimates that 4,868 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish this initial check, and that the average labor rate is approximately $60 an hour. Parts and labor cost will be covered under the manufacturer's warranty program if the hose is returned to the manufacturer. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $292,080 or $60 per airplane.

Since an owner/operator who holds at least a private pilot's certificate as authorized by sections 43.7 and 43.9 of the Federal Aviation Regulations (14 CFR 43.7 and 43.9) can accomplish the initial check of the airplane maintenance records, the only cost impact upon the public is the time it will take the affected airplane owners/operators of airplanes to check the records. The FAA has not taken into account the cost of the inspection of the hoses because this inspection would be on the condition a hose replacement had been made within a certain time frame. The cost of replacing the hose is not included in the initial cost estimate, since the manufacturer is offering warranty credit for the hose replacement.

The cost impact figure discussed above is based on the assumption that no operator has yet accomplished any of the requirements of this AD action, and that no operator will accomplish these 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 copy of the final

evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–15–13 Raytheon Aircraft Company: Amendment 39–10664; Docket No. 97–CE–92–AD.

Applicability: The following airplane models and serial numbers, certificated in any category.

Note 1: The airplane models and serial numbers listed in this AD take precedence over those listed in Raytheon Aircraft Service Bulletin No. 2718, Rev. 1, Issued: January, 1997; Revised: June, 1997.

Models	Serial Nos.
65–90	LJ–1 through LJ–75, and LJ–77 through LJ–113.
65–A90	LJ–76, LJ–114 through LJ–317, and LJ–178A.
B90	LJ–318 through LJ–501.
C90	LJ–502 through LJ–1062.
C90A	LJ–1063 through LJ–1445.
E90	LW–1 through LW–347.
F90	LA–2 through LA–236.
H90	LL–1 through LL–61.
100	B–2 through B–89, and B–93.
A100	B–1, B–90 through B–92, B–94 through B–204, and B–206 through B–247.
A100–1 (RU–21J)	BB–3 through BB–5.
B100	BE–1 through BE–137.
200	BB–2, BB–6 through BB–185, BB–187 through BB–202, BB–204 through BB–269, BB–271 through BB–407, BB–409 through BB–468, BB–470 through BB–488, BB–490 through BB–509, BB–511 through BB–529, BB–531 through BB–550, BB–552 through BB–562, BB–564 through BB–572, BB–574 through BB–590, BB–592 through BB–608, BB–610 through BB–626, BB–628 through BB–646, BB–648 through BB–664, BB–735 through BB–792, BB–794 through BB–797, BB–799 through BB–822, BB–824 through BB–828, BB–830 through BB–853, BB–872, BB–873, BB–892, BB–893, and BB–912.
200C	BL–1 through BL–23, and BL–25 through BL–36.
200CT	BN–1.
200T	BT–1 through BT–22, and BT–28.
A200	BC–1 through BC–75, and BD–1 through BD–30.
A200C	BJ–1 through BJ–66.
A200CT	BP–1, BP–7 through BP–11, BP–22, BP–24 through BP–63, FC–1 through FC–3, FE–1 through FE–36, and GR–1 through GR–19.
B200	BB–829, BB–854 through BB–870, BB–874 through BB–891, BB–894, BB–896 through BB–911, BB–913 through BB–990, BB–992 through BB–1051, BB–1053 through BB–1092, BB–1094, BB–1095, BB–1099 through BB–1104, BB–1106 through BB–1116, BB–1118 through BB–1184, BB–1186 through BB–1263, BB–1265 through BB–1288, BB–1290 through BB–1300, BB–1302 through BB–1425, BB–1427 through BB–1447, BB–1449, BB–1450, BB–1452, BB–1453, BB–1455, BB–1456, and BB–1458 through BB–1536.
B200C	BL–37 through BL–57, BL–61 through BL–140, BU–1 through BU–10, BV–1 through BV–12, and BW–1 through BW–21.
B200CT	BN–2 through BN–4, BU–11, BU–12, FG–1, and FG–2.
B200T	BT–23 through BT–27, and BT–29 through BT–38.
300	FA–1 through FA–230, and FF–1 through FF–19.
B300	FL–1 through FL–141.
B300C	FM–1 through FM–9, and FN–1.

Note 2: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

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

To prevent fuel flow interruption, which if not corrected, could lead to uncommanded loss of engine power and loss of control of the airplane, accomplish the following:

(a) For airplanes manufactured prior to January 1, 1994: within the next 200 hours time-in-service (TIS) after the effective date of this AD, check the airplane maintenance records for any MIL–H–6000B fuel hose replacement from January 1, 1994, up to and including the effective date of this AD. Accomplish the following in accordance with PART II of the ACCOMPLISHMENT INSTRUCTIONS section in Raytheon Aircraft Mandatory Service Bulletin (SB) No. 2718, Rev. 1, Issued: January, 1997; Revised: June, 1997:

(1) If the airplane records show that an MIL–H–6000B fuel hose has been replaced, prior to further flight, inspect the airplane fuel hoses for a ⅜-inch-wide red or orange-red, length-wise stripe, with the manufacturer's code, 94519, printed periodically along the line in red letters on one side. The hoses have a spiral or diagonal outer wrap with a fabric-type texture on the rubber surface.

(2) Prior to further flight, replace any fuel hose that matches the description in paragraph (a)(1) of this AD with an FAA-approved MIL–H–6000B fuel hose that has a criss-cross or braided external wrap.

(b) An owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) can accomplish paragraph (a) required by this AD, and must enter the accomplished action into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(c) For Raytheon Models C90A, B200, and B300 airplanes that were manufactured on January 1, 1994, and after: within the next 200 hours time-in-service (TIS) after the effective date of this AD, replace the MIL–H–6000B fuel hoses in accordance with PART I of the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon SB No. 2718, Rev. 1, Issued: January, 1997, Revised: June, 1997.

(d) As of the effective date of this AD, no person shall install a rubber fuel hose having spiral or diagonal external wrap with a ⅜-inch-wide red or orange-red, length-wise stripe running down the side of the hose, with the manufacturer's code, 94519, printed periodically along the line in red letters on any of the affected airplanes.

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

(f) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, Room 100, 1801 Airport Rd., Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

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

(g) The inspection and replacement required by this AD shall be done in accordance with Raytheon Aircraft Mandatory Service Bulletin No. 2718, Rev. 1, Issued: January, 1997; Revised: June, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from to Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(h) This amendment becomes effective on August 28, 1998.

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

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–18868 Filed 7–15–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 622

[Docket No. 971128281–8165–02; I.D. 102197D]

RIN 0648–AG27

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the Southern Atlantic States; Golden Crab Fishery Off the Southern Atlantic States; Amendment 8; OMB Control Numbers

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement the approved measures in Amendment 8 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). This final rule limits access to the commercial snapper-grouper fishery; allows the retention of snapper-grouper in excess of the bag limits on a permitted vessel that has a single bait net or cast nets on board; and, subject to specific conditions, exempts snapper-grouper lawfully harvested in Bahamian waters from the requirement that they be maintained on board a vessel in the exclusive economic zone (EEZ) of the South Atlantic with head and fins intact. This final rule also corrects the regulations for golden crab. Finally, NMFS informs the public of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirements contained in this rule, publishes the OMB control number for these collections, and corrects the list of control numbers applicable to title 50 of the Code of Federal Regulations. The intended effects of this rule are to conserve and manage the snapper-grouper resources off the southern Atlantic states.

DATES: This final rule is effective August 17, 1998, except that the amendments to 15 CFR 902.1(b), 50 CFR 622.4(g), 622.7(b), and 622.40(b)(3)(ii)(B), and the addition of § 622.18 to subpart B are effective July 16, 1998, and the amendments to § 622.4(a)(2)(vi) and § 622.44 introductory text and the revision of § 622.44(c) are effective December 14, 1998.

ADDRESSES: Copies of the final regulatory flexibility analysis (FRFA) may be obtained from the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments regarding the collection-of-information requirements contained in this rule should be sent to Edward E. Burgess, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, and to the Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Peter Eldridge, 813–570–5305.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery off the southern Atlantic states is managed under the FMP. The FMP was prepared by the South Atlantic Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

On October 30, 1997, NMFS announced the availability of Amendment 8 and requested comments on the amendment (62 FR 58703). On January 12, 1998, NMFS published a proposed rule to implement the measures in Amendment 8 and additional measures proposed by NMFS and requested comments on the rule (63 FR 1813). The background and rationale for the measures in the amendment and proposed rule, including a detailed explanation of the limited access program and key dates, are contained in the preamble to the proposed rule and are not repeated here. On January 28, 1998, after considering the comments received on the amendment and proposed rule, NMFS partially approved Amendment 8. Revised definitions of ''overfishing,'' ''overfished,'' and of ''threshold level'' were disapproved.

Definitions of Overfishing, Overfished, and Threshold Level

NMFS disapproved the revised definitions of overfished/overfishing and the threshold criterion for all snapper-grouper species because they were inconsistent with the Magnuson-Stevens Act requirement to prevent overfishing. Specifically, reducing the overfished/overfishing definitions from the 30-percent to the 20-percent level of the spawning potential ratio (SPR) could allow a higher level of fishing mortality that would jeopardize the capacity of the fisheries to produce maximum sustainable yield (MSY) on a continuing basis. Retention of the overfished/overfishing definitions at the 30-percent SPR level is more risk averse and more likely to assure the attainment of MSY on a continuing basis. The SPR Strategy

Committee advised the Council that the best estimate of OY for snapper-grouper species lies between 30 and 40 percent SPR. This advice constitutes the best scientific information available at this time.

The proposed overfishing threshold of 10 percent SPR was disapproved because it is inconsistent with the Magnuson-Stevens Act requirement to maintain a stock size that has the capacity to produce MSY on a continuing basis. Since the MSY level for species in the snapper-grouper complex is at least 30 percent SPR, the 10-percent criterion would be too low. Thus, the 10-percent criterion was disapproved because it was not consistent with national standard 1.

Comments and Responses

Comments on Amendment 8 and on the proposed rule were received from the Council and 11 individuals.

Comment: The Council reiterated its support for Amendment 8 and stated that it did not understand why NMFS disapproved the threshold level.

Response: NMFS agrees with the Council on the approved measures of Amendment 8. The proposed overfishing threshold of 10 percent SPR was disapproved because it is inconsistent with the Magnuson-Stevens Act requirement to maintain a stock size that has the capacity to produce MSY on a continuing basis.

Comment: One fisherman stated that he wanted snapper-grouper landings from Gulf statistical area number 2 to be included for eligibility purposes.

Response: Amendment 8 allows landings from Gulf statistical area number 2 to be included for eligibility purposes, provided these landings were harvested, landed, and sold in compliance with all state and Federal regulations.

Comment: Six individuals, who did not meet the criterion of having a Federal snapper-grouper permit during the period February 11, 1996, through February 11, 1997, oppose this criterion for the limited access program. They believe that all currently permitted vessels should be allowed to remain in the fishery.

Response: NMFS disagrees with these comments for the following reasons. The average number of permitted vessels between 1993 and 1996 has been approximately 2,100 vessels. Of these, over 1,200 did not report any landings of snapper-grouper species. It appears that many vessel owners obtained snapper-grouper permits for speculative purposes.

On July 30, 1991, a notice of control date for entry into the snapper-grouper fishery was published in the **Federal Register** (56 FR 36052). This notice announced that anyone entering the snapper-grouper fishery in the EEZ off the South Atlantic states after July 30, 1991 (control date), may not be assured of future access to the fishery if a management regime is developed and implemented. Since that time, NMFS and the South Atlantic Council have informed the public on several occasions that entry to the fishery could be limited. The purpose of these announcements was to discourage new entry into the fishery based on economic speculation.

After extensive analysis, the Council concluded that the size and capacity of the fleet have increased significantly in recent years. Presently, there is excessive harvesting capacity in the fishery. The Council concluded that any gains from conservation measures would lead to new entries into the fishery, which would negate the positive impacts of conservation measures. In addition, the entry of new vessels would lead to gear and area conflicts as more vessels competed for available resources on the same fishing grounds.

The Council and NMFS believe that limiting participation to those vessels that held a permit between February 11, 1996, and February 11, 1997, will stabilize the number of vessels in the fishery. Further, the two-for-one transfer provision will reduce the number of vessels to the level that the resource can sustain. In summary, this measure will promote orderly utilization of the resource, promote stability in the fishery and facilitate long-term planning, minimize gear and area conflicts among fishermen, and decrease incentives for overcapitalization. Thus, NMFS supports the limited access program.

Comment: One individual believes everyone has a right to fish snapper-grouper commercially.

Response: The snapper-grouper resources belong to all citizens of the United States, including future generations. The Magnuson-Stevens Act directs that overfishing be prevented while achieving, on a continuing basis, the OY from each fishery. Further, the Magnuson-Stevens Act directs that overfished stocks be rebuilt. Given these statutory mandates and the fragile nature of the snapper-grouper resource, not everyone will be allowed to fish commercially. In fact, fishing pressure must be reduced substantially to rebuild currently overfished species in the snapper-grouper management unit within statutory time frames.

Comment: Two individuals, who will qualify for a trip-related commercial permit, oppose the provision that a replacement vessel shall be equal to or less than the size (length and gross tonnage) of the replaced vessel.

Response: Although the Council is allowing low-volume fishermen to continue to fish, it does not want these fishermen to add to the overfishing problem. If low volume fishermen were allowed to increase the size or capacity of their vessel, they would increase the fishing power of the vessel which could lead to greater catches, thereby exacerbating the overfishing problem in the fishery. The comments do not provide substantive information that would provide a basis for disapproval of this provision. NMFS, therefore, disagrees with the comments and has approved this provision.

Delayed Effectiveness for Commercial Trip Limits

The revisions to the commercial trip limits in § 622.44 introductory text and paragraph (c) are made effective December 14, 1998 to avoid differential regulatory effects on permittees based solely on their birth month (date of permit expiration) and to minimize administrative problems related to permit issuance. December 14, 1998 is the date that limited access permits are required and that prior snapper-grouper commercial permits are no longer valid. If the commercial trip limits were effective prior to that date, permittees whose permits expire before that date and who would be eligible only for a trip-limited permit would be forced to obtain the trip-limited permit and to be constrained by the associated commercial trip limit. However, such permittees whose permits would not expire by that date could continue to fish until that date with their existing commercial permits and without a commercial trip limit. This differential regulatory impact based solely on birth month (permit expiration date) is undesirable. Also, it is likely that this group of permittees would defer application for a limited access (trip-limited) permit as long as possible, thus impeding orderly issuance of such permits.

Changes From the Proposed Rule

In § 622.4(a)(2)(vi), the proposed language regarding the terms ''transferable commercial permit'' and ''trip-limited commercial permit'' was determined to be unnecessary and was removed because the existing term, ''commercial vessel permit'' is adequate. The requirement to have either a transferable commercial permit or a trip-limited commercial permit is addressed specifically in § 622.18(a).

Minor editorial revisions are made in §§ 622.4(g) and 622.7(b) to conform to revisions implemented by the final rule for Amendment 15 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (62 FR 67714, December 30, 1997), which occurred after publication of the proposed rule for snapper-grouper Amendment 8.

In § 622.18 of the proposed rule, minor editorial changes were made in paragraph (b) to improve clarity. Further, the language in paragraph (d)(2)(iv) was inadvertently duplicated in paragraph (d)(3)(ii). In this final rule, § 622.18(d)(3)(ii) is removed, and § 622.18(d)(3)(iii) is redesignated as § 622.18(d)(3)(ii) to eliminate the redundancy and reorder the section.

In § 622.41 of the proposed rule, the headings of paragraphs (d)(3), (d)(4), and (d)(5) were revised to reflect more accurately the effect of the paragraphs, and minor editorial revisions to those paragraphs were made to state the provisions more concisely.

NMFS is also making a technical amendment to § 622.40(b)(3)(ii)(B), which was not included in the proposed rule. This technical amendment revises a phrase that did not appropriately express the intent of the Fishery Management Plan for the Golden Crab Fishery of the South Atlantic Region. Specifically, the phrase ''hinges and fasteners'' is revised to read ''hinges or fasteners.'' The effect is that either hinges or fasteners must be constructed of degradable materials; the prior existing regulatory language incorrectly required both hinges and fasteners to be degradable.

Under NOAA Administrative Order 205–11, 7.01, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere, Department of Commerce, has delegated authority to sign material for publication in the **Federal Register** to the Assistant Administrator for Fisheries, NOAA (AA).

Classification

The Regional Administrator, Southeast Region, NMFS, with the concurrence of the AA, determined that the approved measures of Amendment 8 are necessary for the conservation and management of the snapper-grouper fishery off the southern Atlantic states and that, with the exception of the measures that were not approved, Amendment 8 is consistent with the Magnuson-Stevens Act and other applicable law.

This final rule has been determined to be not significant for purposes of E.O. 12866.

NMFS prepared a FRFA based on an initial regulatory flexibility analysis (IRFA). No public comments were received on the IRFA and no other information was received that would alter the IRFA conclusions. Also, the disapproval of certain amendment measures did not result in changes to the final rule compared to the proposed rule. For these reasons, the FRFA adopts the analyses and findings of the IRFA without change. The FRFA concludes that a significant economic impact on a substantial number of small entities will result from implementation of Amendment 8. A summary of the FRFA follows.

The rule is based largely on the need to resolve overcapitalization problems in the fishery; the Council is revising the existing permit system to cap the number of participants in the fishery and to follow that with future actions to control the level of overall effort and catch. Other actions in the rule allow fishermen to catch bait with nets and also exempt recreational fishermen from the requirement to land snapper-grouper species with the head and fins intact if the fish were caught legally in Bahamian waters and the fisherman does not fish in the EEZ. The rule will affect about 2,500 commercial snapper-grouper fishermen who operate vessels and equipment worth from $53,000 to $237,000 per operation. A number of these operations land only a minor amount of the snapper-grouper species, and this is indicated by the observation that average annual snapper-grouper landings per vessel are valued at about $6,200. The rule contains three new, minor data collection requirements that can be met by the fishermen without the need for additional reporting or recordkeeping skills. The Council considered a number of alternatives to the proposed options and, in all cases, rejected the status quo because the objectives of the rule would not be met. The options considered ranged from options that would create only slight changes relative to the status quo to options that would meet the objectives, but only at the cost of a considerable negative economic impact on existing fishermen. The Council chose the preferred options on the basis that progress toward the objectives would be made without imposing excessive negative impacts on existing small business entities.

Copies of the FRFA are available (see **ADDRESSES**).

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 that collection of information displays a currently valid OMB control number.

This rule contains three new, one-time collection-of-information requirements subject to the PRA—namely, the submission of applications for limited access commercial permits for snapper-grouper, reconsideration of determinations that applicants are not eligible for initial limited access commercial permits, and submission of contracts that provide for transfers of rights to limited access commercial permits. These requirements have been approved by OMB under OMB control number 0648–0340. The public reporting burdens for these collections of information are estimated at 20, 45, and 15 minutes per response, respectively, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding these burden estimates or any other aspects of the collections of information, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

Timely and orderly implementation of the new limited access program for South Atlantic snapper-grouper requires that § 622.18 and related provisions in §§ 622.4(g) and 622.7(b) be made effective as soon as possible, i.e., July 16, 1998. Section 622.18 deals exclusively with the administrative and operational aspects of the limited access program. The provisions of § 622.18 outline numerous deadlines for actions by persons seeking to obtain a limited access permit, criteria for permit eligibility, and administrative actions by NMFS that must precede actions by a permit applicant. These permit-related provisions are interrelated. To ensure adequate time for NMFS to perform prerequisite actions, such as determination of eligibility and notification of owners, to provide a reasonable amount of time for applicants to respond as required by the provisions of Amendment 8 and this rule, and to assure orderly implementation of the limited access program, § 622.18 must be made effective as soon as possible. Similarly, the provisions related to permit transferability in § 622.4(g), the prohibition on falsifying information on a permit application in § 622.7(b), and the OMB control numbers for the three new, one-time collection-of-information requirements contained in 15 CFR 902.1(b) are directly related to the initial implementation of the limited access

program and must also be made effective as soon as possible. Under 5 U.S.C. 553(d)(3), the AA, for good cause, finds that it would be unnecessary and contrary to the public interest to delay for 30 days the effective date of the amendments to §§ 622.4(g), 622.7(b), 622.18, and 15 CFR 902.1(b).

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: July 10, 1998.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR part 902 and 50 CFR part 622 are amended as follows:

15 CFR CHAPTER IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. Effective July 16, 1998, in § 902.1, paragraph (b) table, under 50 CFR, the following entry is added in numerical order to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
* * * * *	
50 CFR	
* * * * *	
622.18	–0340
* * * * *	

50 CFR Chapter VI

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

3. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

4. Effective December 14, 1998, in § 622.4, the last sentence of paragraph (a)(2)(vi) is revised to read as follows:

§ 622.4 Permits and fees.

(a) * * *

(2) * * *

(vi) * * * See § 622.18 for limitations on the use, transfer, and renewal of a commercial vessel permit for South Atlantic snapper-grouper.

* * * * *

5. Effective July 16, 1998, in § 622.4, the first sentence of paragraph (g) is revised to read as follows:

§ 622.4 Permits and fees.

* * * * *

(g) Transfer. A vessel permit, license, or endorsement or dealer permit issued under this section is not transferable or assignable, except as provided in paragraph (m) of this section for a commercial vessel permit for Gulf reef fish, in paragraph (n) of this section for a fish trap endorsement, in paragraph (p) of this section for a red snapper license, in paragraph (q) of this section for a king mackerel permit, in § 622.17(i) for a commercial vessel permit for golden crab, or in § 622.18(e) for a commercial vessel permit for South Atlantic snapper-grouper. * * *

* * * * *

6. Effective July 16, 1998, in § 622.7, paragraph (b) is revised to read as follows:

§ 622.7 Prohibitions.

* * * * *

(b) Falsify information on an application for a permit, license, or endorsement or submitted in support of such application, as specified in § 622.4(b), (g), (p), or (q), or in § 622.17, or in § 622.18.

* * * * *

7. Effective July 16, 1998, § 622.18 is added to subpart B to read as follows:

§ 622.18 South Atlantic snapper-grouper limited access.

(a) *Applicability*. Beginning December 14, 1998, the only valid commercial vessel permits for South Atlantic snapper-grouper are those that have been issued under the limited access criteria in this section. A vessel may have either a transferable commercial permit or a trip-limited commercial permit for South Atlantic snapper-grouper.

(b) *Initial eligibility*. A vessel is eligible for an initial limited access commercial permit for South Atlantic snapper-grouper if the owner owned a vessel with a commercial vessel permit for South Atlantic snapper-grouper at any time from February 11, 1996, through February 11, 1997, and owned a permitted vessel that had at least one landing of snapper-grouper from the South Atlantic from January 1, 1993, through August 20, 1996, as reported on fishing vessel logbooks received by the SRD on or before August 20, 1996. An owner whose permitted vessels had landings of snapper-grouper from the South Atlantic of at least 1,000 lb (453.6 kg), whole weight, in any one of the years 1993, 1994, or 1995, or in 1996 through August 20, as reported on fishing vessel logbooks received by the SRD on or before August 20, 1996, is eligible for an initial transferable permit. All other qualifying owners are eligible for an initial trip-limited permit.

(c) *Determinations of eligibility*—(1) *Permit history*. The sole basis for determining whether a vessel had a commercial vessel permit for South Atlantic snapper-grouper at any time from February 11, 1996, through February 11, 1997, is NMFS' permit records. An owner of a currently permitted vessel who believes he/she meets the February 11, 1996, through February 11, 1997, permit history criterion based on ownership of a vessel under a different name, as may have occurred when ownership has changed from individual to corporate or vice versa, must document his/her continuity of ownership. No more than one owner of a currently permitted vessel will be credited with meeting the permit history criterion based on a vessel's permit history.

(2) *Landings*. (i) Landings of snapper-grouper from the South Atlantic during the qualifying period are determined from fishing vessel logbooks received by the SRD on or before August 20, 1996. State trip ticket data may be considered in support of claimed landings provided such trip ticket data were received by the state on or before September 20, 1996.

(ii) Only landings when a vessel had a valid commercial permit for snapper-grouper and only landings that were harvested, landed, and sold in compliance with state and Federal regulations may be used to establish eligibility.

(iii) For the purpose of eligibility for a limited access commercial permit for snapper-grouper, the owner of a vessel that had a commercial snapper-grouper permit during the qualifying period retains the snapper-grouper landings record of that vessel during the time of his/her ownership unless a sale of the vessel included a written agreement that credit for such landings was transferred to the new owner. Such transfer of credit must be for the vessel's entire

record of landings of snapper-grouper from the South Atlantic.

(d) *Implementation procedures*—(1) *Notification of status*. On or about July 27, 1998, the RD will notify each owner of a vessel that had a commercial permit for South Atlantic snapper-grouper at any time from February 11, 1996, through February 11, 1997, and each owner of a vessel that has a commercial permit for South Atlantic snapper-grouper on July 16, 1998, of NMFS' initial determination of eligibility for either a transferable or a trip-limited, limited access commercial permit for South Atlantic snapper-grouper. Each notification will include an application for such permit. Addresses for such notifications will be based on NMFS' permit records. A vessel owner who believes he/she qualifies for a limited access commercial permit for South Atlantic snapper-grouper and who does not receive such notification must obtain an application from the RD.

(2) *Applications*. (i) An owner of a vessel who desires a limited access commercial permit for South Atlantic snapper-grouper must submit an application for such permit postmarked or hand-delivered not later than October 14, 1998. Failure to apply in a timely manner will preclude permit issuance even when the vessel owner meets the eligibility criteria for such permit.

(ii) A vessel owner who agrees with NMFS' initial determination of eligibility, including type of permit (transferable or trip-limited), need provide no documentation of eligibility with his/her application.

(iii) A vessel owner who disagrees with the initial determination of eligibility or type of permit must specify the type of permit applied for and provide documentation of eligibility. Documentation and other information submitted on or with an application are subject to verification by comparison with state, Federal, and other records and information. Submission of false documentation or information may disqualify an owner from initial participation in the limited access commercial South Atlantic snapper-grouper fishery and is a violation of the regulations in this part.

(iv) If an application that is postmarked or hand delivered in a timely manner is incomplete, the RD will notify the vessel owner of the deficiency. If the owner fails to correct the deficiency within 20 days of the date of the RD's notification, the application will be considered abandoned.

(3) *Issuance*. (i) If a complete application is submitted in a timely manner and the eligibility requirements specified in paragraph (b) of this section are met, the RD will issue an initial commercial vessel permit, transferable or trip-limited, as appropriate, and mail it to the vessel owner not later than December 3, 1998.

(ii) If the eligibility requirements specified in paragraph (b) of this section are not met, the RD will notify the vessel owner, in writing, not later than November 13, 1998 of such determination and the reasons for it.

(4) *Reconsideration*. (i) A vessel owner may request reconsideration of the RD's determination regarding initial permit eligibility by submitting a written request for reconsideration to the RD. Such request must be postmarked or hand delivered within 20 days of the date of the RD's notification denying initial permit issuance and must provide written documentation supporting permit eligibility.

(ii) Upon receipt of a request for reconsideration, the RD will forward the initial application, the RD's response to that application, the request for reconsideration, and pertinent records to an Application Oversight Board consisting of state directors (or their designees) from each state in the Council's area of jurisdiction. Upon request, a vessel owner may make a personal appearance before the Application Oversight Board.

(iii) If reconsideration by the Application Oversight Board is requested, such request constitutes the vessel owner's written authorization under section 402(b)(1)(F) of the Magnuson-Stevens Act for the RD to make available to the Application Oversight Board members such confidential catch and other records as are pertinent to the matter under reconsideration.

(iv) The Application Oversight Board may only deliberate whether the eligibility criteria specified in paragraph (b) of this section were applied correctly in the vessel owner's case, based solely on the available record, including documentation submitted by the owner. The Application Oversight Board may not consider whether an owner should have been eligible for a commercial vessel permit because of hardship or other factors. The Application Oversight Board members will provide individual recommendations for each application for reconsideration to the RD.

(v) The RD will make a final decision based on the eligibility criteria specified in paragraph (b) of this section and the available record, including documentation submitted by the vessel owner, and the recommendations and comments from members of the Application Oversight Board. The RD may not consider whether a vessel owner should have been eligible for a commercial vessel permit because of hardship or other factors. The RD will notify the owner of the decision and the reason for it, in writing, within 15 days of receiving the recommendations from the Application Oversight Board members. The RD's decision will constitute the final administrative action by NMFS.

(e) *Transfers of permits*. A snapper-grouper limited access permit is valid only for the vessel and owner named on the permit. To change either the vessel or the owner, an application for transfer must be submitted to the RD.

(1) *Transferable permits*. (i) An owner of a vessel with a transferable permit may request that the RD transfer the permit to another vessel owned by the same entity.

(ii) A transferable permit may be transferred upon a change of ownership of a permitted vessel with such permit from one to another of the following: Husband, wife, son, daughter, brother, sister, mother, or father.

(iii) A transferable permit may be transferred to a vessel whose owner had, as of August 20, 1996, a written contract for the purchase of a vessel that included a provision transferring to the new owner the rights to any limited access permit to which the former owner might become entitled under the provisions for initial issue of limited access permits. To be considered, any such written contract must be submitted to the RD postmarked or hand-delivered on or before December 14, 1998.

(iv) Except as provided in paragraphs (e)(1)(i), (ii), and (iii) of this section, a person desiring to acquire a limited access, transferable permit for South Atlantic snapper-grouper must obtain and exchange two such permits for one new permit.

(v) A transfer of a permit that is undertaken under paragraph (e)(1)(ii), (e)(1)(iii), or (e)(1)(iv) of this section will constitute a transfer of the vessel's entire catch history to the new owner.

(2) *Trip-limited permits*. An owner of a vessel with a trip-limited permit may request that the RD transfer the permit to another vessel owned by the same entity provided the length and gross tonnage of the replacement vessel are equal to or less than the length and gross tonnage of the replaced vessel.

(f) *Renewal*. NMFS will not reissue a commercial vessel permit for South Atlantic snapper-grouper if the permit is revoked or if the RD does not receive an application for renewal within 60 days of the permit's expiration date.

8. In § 622.38, paragraph (a) is revised and paragraph (i) is added to read as follows:

§ 622.38 Landing fish intact.

* * * * *

(a) The following must be maintained with head and fins intact: Cobia, king mackerel, and Spanish mackerel in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ, except as specified for king mackerel in paragraph (h) of this section; South Atlantic snapper-grouper in or from the South Atlantic EEZ, except as specified in paragraphs (e) and (i) of this section; yellowtail snapper in or from the Caribbean EEZ; and finfish in or from the Gulf EEZ, except as specified in paragraphs (c) and (d) of this section. Such fish may be eviscerated, gilled, and scaled, but must otherwise be maintained in a whole condition.

* * * * *

(i) In the South Atlantic EEZ, snapper-grouper lawfully harvested in Bahamian waters are exempt from the requirement that they be maintained with head and fins intact, provided valid Bahamian fishing and cruising permits are on board the vessel and the vessel is in transit through the South Atlantic EEZ. For the purpose of this paragraph (i), a vessel is in transit through the South Atlantic EEZ when it is on a direct and continuous course through the South Atlantic EEZ and no one aboard the vessel fishes in the EEZ.

9. In § 622.39, paragraph (a)(3) is added to read as follows:

§ 622.39 Bag and possession limits.

(a) * * *

(3) Paragraph (a)(1) of this section notwithstanding, the bag and other limits specified in § 622.35(b) apply for South Atlantic snapper-grouper in or from the EEZ to a person aboard a vessel for which a commercial permit for South Atlantic snapper-grouper has been issued that has on board a longline in the longline closed area.

* * * * *

10. Effective July 16, 1998, in § 622.40(b)(3)(ii)(B), the last sentence is revised to read as follows:

§ 622.40 Limitations on traps and pots.

* * * * *

(b) * * *

(3) * * *

(ii) * * *

(B) * * * The hinges or fasteners of such door or panel must be made of either ungalvanized or uncoated iron wire no larger than 19 gauge (0.04 inch (1.0 mm) in diameter) or untreated cotton string no larger than 3/16 inch (4.8 mm) in diameter.

* * * * *

11. In § 622.41, paragraph (d)(2)(ii) introductory text and paragraph (d)(3) are revised and paragraphs (d)(4) and (d)(5) are added to read as follows:

§ 622.41 Species specific limitations.

* * * * *

(d) * * *

(2) * * *

(ii) Except as specified in paragraphs (d)(3) through (d)(5) of this section, a person aboard a vessel with unauthorized gear on board, other than trawl gear, that fishes in the EEZ on a trip is limited on that trip to:

* * * * *

(3) *Possession allowance regarding sink nets off North Carolina.* A vessel that has on board a commercial permit for South Atlantic snapper-grouper, excluding wreckfish, that fishes in the EEZ off North Carolina with a sink net on board, may retain, without regard to the limits specified in paragraph (d)(2)(ii) of this section, otherwise legal South Atlantic snapper-grouper taken with bandit gear, buoy gear, handline, rod and reel, or sea bass pot. For the purpose of this paragraph (d)(3), a sink net is a gillnet with stretched mesh measurements of 3 to 4.75 inches (7.6 to 12.1 cm) that is attached to the vessel when deployed.

(4) *Possession allowance regarding bait nets.* A vessel that has on board a commercial permit for South Atlantic snapper-grouper, excluding wreckfish, that fishes in the South Atlantic EEZ with no more than one bait net on board, may retain, without regard to the limits specified in paragraph (d)(2)(ii) of this section, otherwise legal South Atlantic snapper-grouper taken with bandit gear, buoy gear, handline, rod and reel, or sea bass pot. For the purpose of this paragraph (d)(4), a bait net is a gillnet not exceeding 50 ft (15.2 m) in length or 10 ft (3.1 m) in height with stretched mesh measurements of 1.5 inches (3.8 cm) or smaller that is attached to the vessel when deployed.

(5) *Possession allowance regarding cast nets.* A vessel that has on board a commercial permit for South Atlantic snapper-grouper, excluding wreckfish, that fishes in the South Atlantic EEZ with a cast net on board, may retain, without regard to the limits specified in paragraph (d)(2)(ii) of this section, otherwise legal South Atlantic snapper-grouper taken with bandit gear, buoy gear, handline, rod and reel, or sea bass pot. For the purpose of this paragraph (d)(5), a cast net is a cone-shaped net thrown by hand and designed to spread out and capture fish as the weighted circumference sinks to the bottom and comes together when pulled by a line.

* * * * *

12. Effective December 14, 1998, in § 622.44, the last sentence of the introductory text and paragraph (c) are revised to read as follows:

§ 622.44 Commercial trip limits.

* * * For fisheries governed by this part, commercial trip limits apply as follows (all weights are round or eviscerated weights):

* * * * *

(c) *South Atlantic snapper-grouper.* When a vessel fishes on a trip in the South Atlantic EEZ, the vessel trip limits specified in this paragraph (c) apply, provided persons aboard the vessel are not subject to the bag limits. See § 622.39(a) for applicability of the bag limits.

(1) *Trip-limited permits.* A vessel for which a trip-limited permit for South Atlantic snapper-grouper has been issued is limited to 225 lb (102.1 kg) of snapper-grouper.

(2) *Golden tilefish.* (i) Until the fishing year quota specified in § 622.42(e)(2) is reached, 5,000 lb (2,268 kg).

(ii) After the fishing year quota specified in § 622.42(e)(2) is reached, 300 lb (136 kg).

(3) *Snowy grouper.* (i) Until the fishing year quota specified in § 622.42(e)(1) is reached, 2,500 lb (1,134 kg).

(ii) After the fishing year quota specified in § 622.42(e)(1) is reached, 300 lb (136 kg).

* * * * *

[FR Doc. 98–18909 Filed 7–15–98; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 522 and 556

Implantation or Injectable Dosage Form New Animal Drugs; Spectinomycin Solution; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of May 1, 1998 (63 FR 24106). The document amended the animal drug regulations to reflect approval of a new animal drug application (NADA)

filed by Pharmacia & Upjohn Co. The NADA provides for veterinary prescription use of Adspec™ (spectinomycin) sterile solution for cattle. The document incorrectly listed the tolerance for spectinomycin residues in cattle muscle. This document corrects that error.

EFFECTIVE DATE: July 16, 1998.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV–133), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1644.

SUPPLEMENTARY INFORMATION: In FR Doc. 98–11686 appearing on page 24106 in the **Federal Register** of Friday, May 1, 1998, the following correction is made:

§ 556.600 [Corrected]

1. On page 24107, in the second column, in § 556.600 *Spectinomycin*, in paragraph (c), in the fourth line, ''0.4'' is corrected to read ''0.25''.

Dated: July 9, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98–18956 Filed 7–15–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 529

Certain Other Dosage Form New Animal Drugs; Formalin Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Western Chemical, Inc. The supplement provides for use of formalin solution in the water of all finfish as a parasiticide and all finfish eggs as a fungicide.

EFFECTIVE DATE: July 16, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas A. Bell, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1649.

SUPPLEMENTARY INFORMATION: Western Chemical, Inc., 1269 Lattimore Rd., Ferndale, WA 98248, is sponsor of NADA 140–989 that provides for use of Parasite-S® (formalin, an aqueous solution of 37 percent formaldehyde) in the water (tanks, raceways, and ponds) of select fish and penaeid shrimp for the control of specific external parasites, and as a fungicide for select fish eggs. Western Chemical, Inc., filed a supplemental NADA that provides for use of formalin in the water of all finfish for the control of specific external parasites and as a fungicide for all finfish eggs. The supplemental NADA is approved as of June 18, 1998, and the regulations are amended in 21 CFR 529.1030 to reflect the approval.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this supplement may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

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

List of Subjects in 21 CFR Part 529

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 529 is amended as follows:

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 529 continues to read as follows:

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

2. Section 529.1030 is amended by revising paragraphs (b)(1) and (b)(2), by redesignating paragraph (c) as paragraph (d) and reserving paragraph (c), by revising newly redesignated paragraphs (d) introductory text, (d)(1) and (d)(2)(i), and by adding paragraphs (d)(2)(iv) and (d)(2)(v) to read as follows:

§ 529.1030 Formalin solution.

* * * * *

(b) * * *

(1) No. 050378 for use as in paragraphs (d)(1)(iii), (d)(1)(iv), (d)(1)(v), (d)(2)(iii), (d)(2)(iv), (d)(2)(v), and (d)(3).

(2) Nos. 049968 and 051212 for use as in paragraphs (d)(1)(i), (d)(1)(ii), (d)(2)(i), (d)(2)(ii), and (d)(3).

* * * * *

(c) [Reserved]

(d) *Conditions of use*. It is added to environmental water as follows:

(1) *Indications for use*. (i) Select finfish. For control of external protozoa *Ichthyophthirius* spp., *Chilodonella* spp., *Costia* spp., *Scyphidia* spp., *Epistylis* spp., and *Trichodina* spp., and monogenetic trematodes *Cleidodiscus* spp., *Gyrodactylus* spp., and *Dactylogyrus* spp., on salmon, trout, catfish, largemouth bass, and bluegill.

(ii) Select finfish eggs. For control of fungi of the family Saprolegniaceae on salmon, trout, and esocid eggs.

(iii) Penaeid shrimp. For control of external protozoan parasites *Bodo* spp., *Epistylis* spp., and *Zoothamnium* spp.

(iv) All finfish. For control of external protozoa *Ichthyophthirius* spp., *Chilodonella* spp., *Costia* spp., *Scyphidia* spp., *Epistylis* spp., and *Trichodina* spp., and monogenetic trematodes *Cleidodiscus* spp., *Gyrodactylus* spp., and *Dactylogyrus* spp.

(v) All finfish eggs: For control of fungi of the family Saprolegniaceae.

(2) * * *

(i) For control of external parasites on select finfish:

* * * * *

(iv) For control of external parasites on all finfish:

Aquatic species	Administer in tanks and raceways for up to 1 hour (microliter/liter or part per million (µL/L or ppm))	Administer in earthen ponds indefinitely (µL/L or ppm)
Salmon and trout:		
Above 50 °F	Up to 170	15 to 25[1, 2]
Below 50 °F	Up to 250	15 to 25[1, 2]
All other finfish	Up to 250	15 to 25[1, 2]

[1] Use the lower concentration when ponds, tanks, or raceways are heavily loaded with phytoplankton or fish to avoid oxygen depletion due to the biological oxygen demand by decay of dead phytoplankton. Alternatively, a higher concentration may be used if dissolved oxygen is strictly monitored.

[2] Although the indicated concentrations are considered safe for cold and warm water finfish, a small number of each lot or pond to be treated should always be used to check for any unusual sensitivity to formalin before proceeding.

(v) For control of fungi of the family Saprolegniaceae on all finfish eggs: Eggs

of all finfish except Acipenseriformes, 1,000 to 2,000 µL/L (ppm) for 15 minutes; eggs of Acipenseriformes, up to 1,500 µL/L (ppm) for 15 minutes.

* * * * *

Dated: July 9, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98–18955 Filed 7–15–98; 8:45 am]

BILLING CODE 4160–01–F

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4011, 4022, 4041A, 4044, 4050 and 4281

RIN 1212–AA88

Valuation and Payment of Lump Sum Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation is amending its regulations to increase the maximum value of benefits that the PBGC may pay in lump sum form, and certain other lump sum thresholds, from $3,500 to $5,000. The amendments do not affect lump sum benefits paid by ongoing plans.

DATES: The amendments to 29 CFR 4022.7, 4044.52(b), and 4044.54 are effective July 16, 1998. (However, except to the extent they affect determinations under § 4022.7, the amendments to 29 CFR 4044.52(b) and 4044.54 apply only to a plan with a termination date on or after August 17, 1998.) The final rule is otherwise effective August 17, 1998.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Marc L. Jordan, Attorney, Pension Benefit Guaranty Corporation, Office of the General Counsel, Suite 340, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY/TTD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: Section 203(e) of ERISA specifies the maximum value that a plan may provide it will pay in a lump sum (*i.e.*, single installment) to a participant or surviving spouse without consent. The Taxpayer Relief Act of 1997 increased the section 203(e) maximum from $3,500 to $5,000 effective for plan years beginning after August 5, 1997.

On April 30, 1998, the PBGC proposed to amend its regulations to increase various $3,500 thresholds to $5,000 and to make other changes relating to lump sum payments. The PBGC received no comments in response to the proposed rule and is issuing the final rule without change, as follows:

- Under the final rule, the PBGC may make a lump sum payment of a benefit that has a value of $5,000 or less as of the plan's termination date. (*See* § 4022.7 and, to the extent they affect determinations under § 4022.7, §§ 4044.52(b), and 4044.54.) There are special rules for applying the lump sum threshold where the PBGC issues a determination on title IV benefits before it issues a determination on benefits payable under ERISA section 4022(c). Consistent with its current practice, the PBGC will give the participant the option to receive the benefit in the form of an annuity if the monthly benefit (at normal retirement age in the normal form for an unmarried participant) is equal to or greater than $25.

Applicability: This amendment applies to any initial determination issued on or after July 16, 1998. For any initial determination issued before July 16, 1998, the PBGC may make a lump sum payment of a benefit with a value of $5,000 or less, provided (1) the benefit is not yet in pay status, and (2) the participant (with spousal consent) or beneficiary elects the lump sum payment.

- Under the final rule, the lump sum threshold under §§ 4044.52(b) and 4044.54, which is used for determining whether lump sum or annuity assumptions are used to value benefits for purposes of allocating assets to benefits under ERISA section 4044, is $5,000.

Applicability: This amendment applies to any plan with a termination date on or after August 17, 1998.

- The reference to the lump sum threshold in the PBGC's Model Participant Notice (Part 4011, Appendix A) is changed from $3,500 to $5,000.

Applicability: This amendment applies to any Participant Notice issued on or after August 17, 1998. However, for a reasonable time period, the PBGC will not treat a Participant Notice as failing to satisfy the Participant Notice requirements merely because it refers to the $3,500 threshold.

- The dollar thresholds in the Missing Participants regulation are increased from $3,500 to $5,000. *See* §§ 4050.2 (definition of *missing participant annuity assumptions*) and 4050.5(a)(2) (*de minimis* lump sum).

Applicability: This amendment applies to missing participants for whom the deemed distribution date is on or after August 17, 1998.

- The dollar threshold up to which the plan sponsor of a terminated multiemployer plan that is closing out may make a lump sum payment of nonforfeitable benefits is increased from $3,500 to $5,000 (*see* § 4041A.43(b)(1)).

Applicability: This amendment applies to any distribution made on or after August 17, 1998.

- In the case of participant deaths after the termination date, the final rule allows the PBGC to make a lump sum payment of a qualified preretirement survivor annuity with a value of $5,000 or less if the surviving spouse elects a lump sum (§ 4022.7(b)(1)(iii)).

Applicability: This amendment applies to any lump sum payment made on or after July 16, 1998.

- The final rule allows the PBGC to make a lump sum payment, without regard to amount, of any benefits due to an estate (*e.g.*, under a certain and continuous benefit where the designated beneficiary predeceases the participant) if the estate elects a lump sum (*see* § 4022.7(b)(1)(iv)).

Applicability: This amendment applies to any payment made on or after July 16, 1998.

Finally, the final rule (1) eliminates, as unnecessary, two provisions in its multiemployer valuation regulation that refer to the $3,500 limit, and (2) makes clear that the lump sum value of a benefit is calculated by valuing the monthly annuity benefit (which excludes the value of certain preretirement death benefits, such as a qualified preretirement survivor annuity).

Rulemaking Requirements

The PBGC has determined that good cause exists to make certain amendments (the amendments to 29 CFR 4022.7 and, to the extent they affect determinations under 29 CFR 4022.7, the amendments to §§ 4044.52(b) and 4044.54) effective and applicable immediately. These amendments impose requirements only on the PBGC. A delayed effective date is unnecessary because no person other than the PBGC needs time to prepare. *See* 5 U.S.C. 553(d)(3).

E.O. 12866 and the Regulatory Flexibility Act

The PBGC has determined that this final rule is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866. The PBGC certifies that the amendments will not have a significant economic impact on a substantial number of small entities. The amendments will affect only *de minimis* benefits and will have an immaterial effect on liabilities

associated with plan termination. Accordingly, as provided in section 605(b) of the Regulatory Flexibility Act, sections 603 and 604 do not apply.

List of Subjects

29 CFR Parts 4022 and 4041A

Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Pension insurance, Pensions.

29 CFR Parts 4011, 4050 and 4281

Pensions, Reporting and recordkeeping requirements.

For the reasons set forth above, the PBGC is amending parts 4011, 4022, 4041A, 4044, 4050, and 4281 of 29 CFR chapter XL as follows:

PART 4011—DISCLOSURE TO PARTICIPANTS

1. The authority citation for part 4011 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3) and 1311.

Appendix A to Part 4011 [Amended]

2. Appendix A to Part 4011 is amended by removing the sentence ''The PBGC does not pay lump sums exceeding $3,500.'' which immediately precedes the heading ''WHERE TO GET MORE INFORMATION'', and adding in its place the sentence ''The PBGC generally does not pay lump sums exceeding $5,000.''

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

3. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302 and 1322.

4. In § 4022.7, paragraph (b)(1) is revised, and new paragraph (d) is added, to read as follows:

§ 4022.7 Benefits payable in a single installment.

* * * * *

(b)(1) *Payment in lump sum.* Notwithstanding paragraph (a) of this section:

(i) *In general.* If the lump sum value of a benefit payable by the PBGC is $5,000 or less and the benefit is not yet in pay status, the benefit may be paid in a lump sum. In determining whether the lump sum value of a benefit is $5,000 or less, the value of any amounts returned under paragraph (b)(2) of this section is disregarded. If the PBGC determines a title IV benefit before it determines the benefit payable under section 4022(c) of ERISA, the $5,000 threshold shall apply separately to the title IV benefit. The section 4022(c) benefit shall be paid in annuity form if the title IV benefit is paid in annuity form, and otherwise shall be separately subject to the $5,000 threshold.

(ii) *Annuity option.* If the PBGC would otherwise make a lump sum payment in accordance with paragraph (b)(1)(i) of this section and the monthly benefit is equal to or greater than $25 (at normal retirement age and in the normal form for an unmarried participant), the PBGC shall provide the participant (or the beneficiary of a participant who is deceased as of the termination date) the option to receive the benefit in the form of an annuity.

(iii) *Election of QPSA lump sum.* If the lump sum value of a qualified preretirement survivor annuity is $5,000 or less, the benefit is not yet in pay status, and the participant dies after the termination date, the benefit may be paid in a lump sum if so elected by the surviving spouse.

(iv) *Certain and continuous payments to estates.* The PBGC may pay any benefits payable to an estate (*e.g.*, in the case of benefits under a certain and continuous annuity where the designated beneficiary predeceases the participant) in a lump sum without regard to the threshold in paragraph (b)(1)(i) of this section if so elected by the estate. The payments shall be discounted using the immediate interest rate that would be applicable to the plan under § 4044.52(b) if the termination date had been the date of death (or, if later, July 16, 1998).

* * * * *

(d) *Determination of lump sum amount.* The lump sum value of a benefit shall be determined in accordance with § 4044.52(b).

PART 4041A—TERMINATION OF MULTIEMPLOYER PLANS

5. The authority citation for part 4041A continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341a, 1441.

§ 4041A.43 [Amended]

6. In § 4041A.43, paragraph (b)(1) is amended by removing ''$3,500'' and adding, in its place, ''$5,000'.

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

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

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

8. In section 4044.52, the introductory text to paragraph (b) is revised to read as follows:

§ 4044.52 Valuation of benefits.

* * * * *

(b) *Benefits payable as lump sums.* For valuing benefits payable as lump sums (including the return of accumulated employee contributions upon death), and for determining whether the lump sum value of a benefit exceeds $5,000, the plan administrator shall determine the lump sum value of a benefit by valuing, in accordance with paragraph (a) of this section, the monthly annuity benefits payable in the form determined under § 4044.51(a) and commencing at the time determined under § 4044.51(b), except that—

* * * * *

§ 4044.54 [Amended]

9. Section 4044.54 is amended by removing ''$3,500'' and adding, in its place, ''$5,000''.

PART 4050—MISSING PARTICIPANTS

10. The authority citation for part 4050 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1350.

§ 4050.2 [Amended]

11. In § 4050.2, paragraph (5) of the definition of *Missing Participant Annuity Assumptions* is amended by removing ''$3,500'' and adding, in its place, ''$5,000''.

§ 4050.5 [Amended]

12. In § 4050.5, paragraph (a)(2) is amended by removing ''$3,500'' and adding, in its place, ''$5,000''.

Appendix A to Part 4050 [Amended]

13. In Appendix A, the heading is amended by adding at the end, the words ''in plans with deemed distribution dates on and after August 17, 1998''; the introductory text to Example 1 is amended by removing ''$1,750'' and adding, in its place, ''$3,500''; paragraph (1) to Example 1 is amended by removing ''$1,700'' each time it appears and adding, in each place, ''$3,000''; paragraph (2) to Example 1 is amended by removing ''$3,700'' and adding, in its place, ''$5,200'' and removing ''$3,200'' each time it appears and adding, in each place, ''$4,700''; paragraph (3) to Example 1 is amended by removing ''$3,400'' and adding, in its place, ''$4,900'' and removing ''$3,450'' each time it appears and adding, in each place, ''$4,950''; and paragraph (1) of Example 2 is amended by removing

''$3,500'' and adding, in its place, ''$5,000''.

PART 4281—DUTIES OF PLAN SPONSOR FOLLOWING MASS WITHDRAWAL

14. The authority citation for part 4281 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341a, 1399(c)(1)(D), and 1441.

§ 4281.13 [Amended]

15. In section 4281.13, paragraph (b) is removed, the introductory text to paragraph (a) is amended by removing the paragraph designation, the heading, and the words ''paragraph (b) of this section (regarding the valuation of benefits payable as lump sums under trusteed plans) and'', and paragraphs (a)(1) through (a)(5) are redesignated as paragraphs (a) through (e).

§ 4281.14 [Amended]

16. In section 4281.14, the section heading is amended by removing the phrase ''—in general'', and paragraph (a) is amended by removing the words ''Except as otherwise provided in § 4281.15 (regarding the valuation of benefits payable as lump sums under trusteed plans), and subject'' and adding, in their place, the word ''Subject''.

§ 4281.15 [Removed and Reserved]

17. Section 4281.15 is removed and reserved.

Issued in Washington, DC, this 10th day of July, 1998.

Alexis M. Herman,

Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

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

Terrence Deneen,

Acting Secretary, Board of Directors, Pension Benefit Guaranty Corporation.

[FR Doc. 98–18995 Filed 7–15–98; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD11–97–010]

RIN 2115–AE84

Regulated Navigation Area: Copper Canyon, Lake Havasu, Colorado River

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a Regulated Navigation Area (RNA) within the Copper Canyon, Lake Havasu region on the waters of the Colorado River. This action is necessary because the Coast Guard has determined that the extremely heavy traffic of recreational vessels in this area, particularly during peak holiday periods, creates conditions hazardous to navigation and causes vessels carrying law enforcement and emergency medical personnel to be unable to access the area. This RNA will establish an access lane to enhance navigation safety and to permit law enforcement and emergency response officials to reach all areas of Copper Canyon and provide services.

DATES: Effective August 17, 1998.

FOR FURTHER INFORMATION CONTACT: Petty Officer Greg Nelson, U.S. Coast Guard Marine Safety Office; telephone number (619) 683–6492.

SUPPLEMENTARY INFORMATION:

Regulatory History

On April 2, 1998, the Coast Guard published a notice of proposed rulemaking (NPRM) for this regulation in the **Federal Register** (63 FR 16181–16182). The comment period ended June 1, 1998. The Coast Guard received no comments on the proposal. A public hearing was not requested and no hearing was held.

Discussion of Rule

In the past, emergency medical and law enforcement personnel have had difficulty getting through the severe congestion of recreational boats in Copper Canyon. This hazardous condition has become a major public safety concern, particularly during holidays and other times of heavy congestion. This RNA will effectively provide an emergency access lane for law enforcement and other emergency services officials. This land will significantly enhance public safety by allowing quicker emergency response time.

Vessels using Copper Canyon, other than designated patrol vessels, are prohibited from anchoring, mooring, loitering in, or otherwise impeding the transit of any other vessel within the emergency access lane. These non-patrol vessels shall expeditiously and continuously transit the land via the most direct route consistent with navigational safety. At times of heavy congestion, however, designated by periodic Coast Guard Broadcast Notices to Mariners on VHF–FM Channel 16, the emergency access land will be closed to all traffic other than designated patrol vessels, and no entry will be permitted by any recreational or commercial vessel except with the express permission of the Captain of the Port or his designated representative.

The geographic description of the emergency access land constituting this RNA is as follows: beginning at the approximate center of the mouth of Copper Canyon and drawing a line down the approximate center of the canyon, extending shoreward to the end of the navigable waters of the canyon, and comprising a semi-rectangular area extending 30 feet on each side of the line, for a total semi-rectangular width of 60 feet.

This line is more precisely described as: beginning at latitude 34°25′42″ N, longitude 114°18′26″ W, thence southwesterly to latitude 34°25′38″ N, longitude 114°18′26″ W, thence southwesterly to latitude 34°25′37″ N, longitude 114°18′26″ W, thence southwesterly to latitude 34°25′34″ N, longitude 114°18′26″ W, thence southwesterly to latitude 34°25′33″ N, longitude 114°18′28″ W, thence southwesterly to latitude 34°25′29″ N, longitude 114°18′29″ W, thence to the end of the navigable waters of the canyon.

Discussion of Comments

No comments were received.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require 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 regulation to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of the Department of Transportation is unnecessary, because use of the Copper Canyon by both recreational and commercial vessels will not be precluded by this regulation; nor will such use be more nominally affected.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' may include small businesses and not-for-profit

organizations that are not dominant in their fields and governmental jurisdictions with populations less than 50,000.

Because it expects the impact of this rule to be so minimal, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a substantial impact on a significant number of small entities.

Collection of Information

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

Federalism

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

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that under paragraph 2.B.2 of Commandant Instruction M16475.1c, Figure 2–1, paragraph (34)(g), it will have no significant environmental impact and it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist are included in the docket maintained at the address listed in **ADDRESSES**.

Unfunded Mandates

Under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the Coast Guard must consider whether this rule will result in an annual expenditure by state, local, and tribal governments, in the aggregate of $100 million (adjusted annually for inflation). If so, the Act requires that a reasonable number of regulatory alternatives be considered, and that from those alternatives, the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule be selected.

No state, local, or tribal government entities will be effected by this rule, so this rule will not result in annual or aggregate costs of $100 million or more. Therefore, the Coast Guard is exempt from any further regulatory requirements under the Unfunded Mandates Act.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measure, Waterways.

Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165, 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 165.1115 is added to read as follows:

§ 165.1115 Copper Canyon, Lake Havasu, Colorado River—Regulated Navigation Area.

(a) *Location.* The following is a regulated navigation area:

(1) In the water area of Copper Canyon, Lake Havasu, Colorado River, beginning at the approximate center of the mouth of Copper Canyon and drawing a line down the approximate center of the canyon extending shoreward to the end of the navigable waters of the canyon, and comprising a semi-rectangular area extending 30 feet on each side of the line, for a total semi-rectangular width of 60 feet.

(2) This line is more precisely described as: beginning at latitude 34°25′67.6″N, longitude 114°18′38.5″W, thence southwesterly to latitude 34°25′64″N, longitude 114°18′45.7″W, thence northwesterly to latitude 34°25′65.6″N, longitude 114°18′46.7″W, thence southeasterly to latitude 34°25′60.7″N, longitude 114°18′42.7″W, thence southwesterly to longitude 34°25′51.4″N, latitude 114°18′46.2″W, thence southeasterly to latitude 34°25′47.1″N, longitude 114°18′49.4″W, thence to the end of the navigable waters of the canyon.

(b) *Definitions.* For the purposes of this section:

(1) *Vessel:* Every description of watercraft, used or capable of being used as a means of transportation on the water, and regardless of mode of power.

(2) *Patrol Vessel:* Vessels designated by the Captain of the Port, San Diego, to enforce or assist in enforcing these regulations, including Coast Guard, Coast Guard Auxiliary, and San Bernardino County Sheriff's Department Vessels.

(c) *Regulations.*

(1) Vessels, with the exception of patrol vessels, shall not anchor, moor, loiter in, or otherwise impede the transit of any other vessel within the regulated navigation area. Furthermore, all vessels, with the exception of patrol vessels, shall expeditiously and continuously transit the regulated navigation area via the most direct route consistent with navigational safety.

(2) During periods of vessels congestion within the Copper Canyon area, as determined by the Captain of the Port or his or her designated on-scene representative, the regulated navigation area will be closed to all vessels, with the exception of patrol vessels. During designated closure periods, no vessel may enter, remain in, or transit through the regulated navigation area, with the exception of patrol vessels. Designation of periods of vessel congestion and announcement of the closure of the regulated navigation area will be conducted by broadcast notices to mariners on VHF–FM Channel 16 no less frequently than every hour for the duration of the closure period.

(3) Each person in the regulated navigation area shall comply with the directions of the Captain of the Port or his or her designated on-scene representative regarding vessel operation.

Dated: June 25, 1998.

R.D. Sirois,

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

J.C. Card,

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

[FR Doc. 98–18948 Filed 7–15–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD11–98–009]

RIN 2115–AE46

Special Local Regulations; World Series of Power Boat Racing on Mission Bay (Formerly Known as Thunderboat Regatta)

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This notice implements 33 CFR 100.1101, Southern California Annual marine events, for the World Series of Power Boat Racing on Mission Bay. This event, formerly known as the Thunderboat Regatta, consists of racing using high-speed powerboats with a maximum length of 27 feet. Neither the sponsor, nor the date, nor the location of the event has changed since this event was listed as the ''Thunderboat Regatta'' in Table 1 of 33 CFR 100.1101.

These regulations will be effective on that portion of Fiesta Bay and Mission Bay, San Diego, California, that is described in Table 1 of 33 CFR 100.1101. Implementation of 33 CFR 100.1101 is necessary to control vessel traffic in the regulated area during the event to ensure the safety of participants and spectators.

Pursuant to 33 CFR 100.1101(a), Commander, Coast Guard Activities San Diego, is designated Patrol Commander for this event; he has the authority to delegate this responsibility to any commissioned, warrant, or petty officer of the Coast Guard.

DATES: This section is effective from 7:30 a.m. PDT until 6 p.m. PDT, September 18, 1998, and continues to be effective from 7:30 a.m. PDT until 6 p.m. PDT every day through, and including, September 20, 1998. If the event concludes prior to the scheduled termination date and/or time, the Coast Guard will cease enforcement of this section and will announce that fact via Broadcast Notice To Mariners.

FOR FURTHER INFORMATION CONTACT: QMC Michael C. Claeys, U.S. Coast Guard Activities San Diego, California; Tel: (619) 683–6309.

SUPPLEMENTARY INFORMATION:

Discussion of Implementation

The World Series of Power Boat Racing on Mission Bay is scheduled to occur on September 18 and continues daily through, and including, September 20, 1998. This event, formerly known as the Thunderboat Regatta, consists of racing using high-speed powerboats with a maximum length of 27 feet. Neither the sponsor, nor the date, nor the location of the event has changed since this event was listed as the ''Thunderboat Regatta'' in Table 1 of 33 CFR 100.1101.

These Special Local Regulations permit Coast Guard control of vessel traffic in order to ensure the safety of spectator and participant vessels. In accordance with the regulations in 33 CFR 100.1101, no persons or vessels shall block, anchor, or loiter in the regulated area; nor shall any person or vessel transit through the regulated area, or otherwise impede the transit of participant or official patrol vessels in the regulated area, unless cleared for such entry by or through an official patrol vessel acting on behalf of the Patrol Commander.

Dated: June 25, 1998.

J.C. Card,

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

[FR Doc. 98–18947 Filed 7–15–98; 8:45 am]

BILLING CODE 4910–15–M

POSTAL SERVICE

39 CFR Part 111

Use and Determination of Postage Value of Breast Cancer Research Semi-postal Stamp

AGENCY: Postal Service.

ACTION: Final rule; request for comments.

SUMMARY: This rule amends the Domestic Mail Manual to establish the terms and conditions for use and determination of value of the Breast Cancer Research Semi-postal Stamp.

DATES: Effective July 29, 1998. Comments must be received on or before August 17, 1998.

ADDRESSES: Mail or deliver written comments to the Manager, Mail Preparation and Standards, 475 L'Enfant Plaza, SW, Room 6800, Washington, DC, 20260–2405. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday at USPS Headquarters Library, 475 L'Enfant Plaza SW, 11th Floor N, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Anne Emmerth, (202) 268–2363.

SUPPLEMENTARY INFORMATION: The Stamp Out Breast Cancer Act, Pub. L. No. 105–41, 111 Stat. 1119 (1997), directs the Postal Service to make available a Breast Cancer Research Semi-postal Stamp at a special price to enable the public to make contributions to fund breast cancer research. The Act specifies that the price of the special postage stamp is the First-Class Mail single-piece first-ounce letter rate plus a differential not to exceed 25 percent of that rate category. The Act empowers the Governors of the United States Postal Service to establish the price for the stamp. Pursuant to the Act, the Governors have established a price of 40 cents for each Breast Cancer Research Semi-postal Stamp.

Mailers may use the Breast Cancer Research Semi-postal Stamp in place of First-Class Mail single-piece first-ounce letter rate stamps on their mail, if they so choose, in order to make a contribution. The difference between the purchase price of the stamp (40 cents) and the First-Class Mail single-piece first-ounce letter rate (currently 32 cents) less associated costs will be used to fund breast cancer research. Pursuant to the Act, the Postal Service is directed to pay, after deduction for its reasonable costs, 70 percent of the revenue from the differential to the National Institutes of Health, and the remainder to the Department of Defense.

The stamp's dual purposes, namely, as a means of payment of postage and as a device for raising funds for breast cancer research, require that special terms and conditions apply to the use of the stamp. In particular, because the stamp must be made available for a two-year period, and given that the Act does not require that the stamp's price be changed in the event that a change in the First-Class Mail single-piece rate is implemented during the two-year period, the Postal Service has determined that the stamp will be non-denominated. This measure preserves the Governors' option of maintaining the price of the Breast Cancer Research Semi-postal Stamp at 40 cents, even after the First-Class Mail single-piece rate is raised to 33 cents after the stamp's issuance, without the need to reprint the stamp with a new numerical denomination. When the First-Class Mail single-piece rate is increased to 33 cents on January 10, 1999, the postage value of Semi-postal stamps purchased before such change is effected will remain the same. Stamps purchased after a change in the First-Class Mail single-piece rate is effected will have a postage value equivalent to that rate at the time of purchase. Thus, Semi-postal stamps purchased before the First-Class Mail single-piece rate is changed on January 10, 1999, will have a postage value of $0.32; Semi-postal stamps purchased after the rate change is implemented will have a postage value of $0.33.

In lieu of a numerical denomination, the stamp will bear the words ''First-Class.'' This measure is intended to inform mailers that the stamp's postage value is equal to the First-Class Mail single-piece letter rate in effect at the time of purchase. In addition, the Domestic Mail Manual distinguishes the price of the stamp from its postage value and establishes that the postage value of the stamp is determined by the First-Class Mail first-ounce single-piece letter rate in effect at the time of purchase.

Conforming limitations on refunds and valuation for purposes of exchange or conversion are also included in the final rule. A conforming amendment is also made to DMM R000.4.0.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding rulemaking by 39 U.S.C. 410(a), the Postal Service is seeking comments on the following revisions of the Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. See 39 CFR part 111.

List of Subjects in 39 CFR Part 111

Postal Service.

Accordingly, 39 CFR 111 is amended as follows:

PART 111—[AMENDED]

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

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

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

P Postage and Payment Methods

* * * * *

P014 Refunds and Exchanges

1.0 STAMP EXCHANGES

1.1 USPS Fault

[Amend to read:]

The post office may correct mistakes in selling damaged, defective, or otherwise unserviceable stamps by exchanging stamps at full postage value.

1.2 Damaged in Customer's Possession

[Amend the last sentence to read as follows:]

* * * Each such transaction is limited to $100 worth of postage from each customer.

* * * * *

1.5 Purchase Error

[Amend the first sentence to read as follows:]

If a customer bought the wrong denomination stamps (or the wrong kind, size, or denomination envelope), they may be exchanged at full postage value. * * *

* * * * *

2.0 POSTAGE AND FEES REFUNDS

* * * * *

[Add new 2.10 to read as follows:]

2.10 Breast Cancer Research Semi-postal Stamps

Customers may exchange or convert Breast Cancer Research Semi-postal Stamps for their postage value, i.e., the price of the stamps less the contribution amount, to the extent exchange or conversion of postage stamps is permitted under P014. The postage exchanged or converted is equivalent to the First-Class Mail single-piece rate in effect at the time of purchase (currently $0.32), as supported by the mailer's receipt. The contribution amount is not included in the exchange or conversion value. If the mailer cannot produce a receipt, the exchange or conversion value of each Breast Cancer Research Semi-postal Stamp cannot exceed $0.32 per stamp, regardless of whether the First-Class Mail single-piece rate in effect at the time of purchase is $0.33 or higher.

* * * * *

P020 Postage Stamps and Stationery

P022 Adhesive Stamps

1.0 PURCHASE AND USE

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[Create 1.6 to read as follows:]

1.6 Breast Cancer Research Semi-postal Stamps

Breast Cancer Research Semi-postal Stamps are subject to special limitations and conditions:

a. Breast Cancer Research Semi-postal Stamps provide a means for customers to make contributions toward breast cancer research. Breast Cancer Research Semi-postal Stamps are offered for sale for a limited time as provided under 39 U.S.C. 414.

b. The price of the Breast Cancer Research Semi-postal Stamp is 40 cents. The postage value of the Breast Cancer Research Semi-postal Stamp is the First-Class Mail Nonautomation Single-Piece first-ounce letter rate in R100.1.2 that is in effect at the time of purchase. The difference between the purchase price and the First-Class Mail Nonautomation Single-Piece first-ounce letter rate in effect at the time of purchase constitutes a contribution to breast cancer research, and cannot be used to pay postage. Additional postage must be affixed to pieces weighing in excess of one ounce, pieces subject to the nonstandard surcharge, or pieces for which special services have been elected. The postage value of Breast Cancer Research Semi-postal Stamps is fixed according to the First-Class Mail Nonautomation Single-Piece first-ounce letter rate in effect at the time of purchase; the postage value of Breast Cancer Research Semi-postal Stamps purchased before any subsequent change in the First-Class Mail Nonautomation Single-Piece first-ounce letter rate is unaffected by any subsequent change in that rate.

c. Contributions to breast cancer research made through purchase of Breast Cancer Research stamps are not refundable. The postage value of Breast Cancer Research stamps for purposes of exchange or conversion under P014 is determined by the First-Class Mail Nonautomation Single-Piece rate in effect at the time of purchase, or as otherwise provided in P014.2.10.

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R Rates and Fees

R000 Stamps and Stationery

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[Amend the table in R000.4.0 to include the following line item:]

Purpose	Form	Denomination
*	*	* * * * *
Breast Cancer Research.	Panes of up to 20	Purchase Price of $0.40; Postage Value Equivalent to First-Class Mail Nonautomation Single-Piece Rate (currently $0.32); remainder is contribution to fund Breast Cancer Research.

* * * * *

An appropriate amendment to 39 CFR 111.3 will be published to reflect these changes.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 98–19017 Filed 7–15–98; 8:45 am]

BILLING CODE 7710–12–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1008

RIN 0991–AA85

Medicare and State Health Care Programs: Fraud and Abuse; Issuance of Advisory Opinions by the OIG

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Final rule.

SUMMARY: In accordance with section 205 of the Health Insurance Portability and Accountability Act of 1996, this final rule sets forth the specific procedures by which the Department, through the Office of Inspector General (OIG), in consultation with the Department of Justice (DoJ), will issue advisory opinions to outside parties regarding the interpretation and applicability of certain statutes relating to the Federal and State health care programs. The procedures for submitting a request and obtaining an advisory opinion from the OIG were established through interim final regulations published in the **Federal Register** on February 19, 1997. In response to public comments received on these interim final regulations, this final rule revises and clarifies various aspects of the earlier rulemaking.

EFFECTIVE DATE: This rule is effective on July 16, 1998.

FOR FURTHER INFORMATION CONTACT: Joel Schaer, (202) 619–0089, OIG Regulations Officer.

SUPPLEMENTARY INFORMATION:

I. Background

A. Section 205 of Public Law 104–191

The Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104–191, specifically required the Department to provide a formal guidance process to requesting individuals and entities regarding the application of the anti-kickback statute, the safe harbor provisions, and other OIG health care fraud and abuse sanctions. In accordance with section 205 of HIPAA, the Department, in consultation with the DoJ, issues written advisory opinions to parties with regard to: (1) what constitutes prohibited remuneration under the anti-kickback statute; (2) whether an arrangement or proposed arrangement satisfies the criteria in section 1128B(b)(3) of the Social Security Act (the Act), or established by regulation, for activities which do not result in prohibited remuneration; (3) what constitutes an inducement to reduce or limit services to Medicare or Medicaid program beneficiaries under section 1128A(b) of the Act [1]; and (4) whether an activity or proposed activity constitutes grounds for the imposition of civil or criminal sanctions under sections 1128, 1128A, or 1128B of the Act. Thus, advisory opinions may be issued with regard to the criminal provisions of section 1128B of the Act, which includes the anti-kickback statute, as well as the provisions of section 1128 of the Act, which authorizes the Department to exclude individuals and entities from participation in Federal and State health care programs. Exclusions are authorized in a wide variety of circumstances, including, for example, conviction of health care related offenses, State licensure action, and submission of claims in excess of usual charges or for services that fail to meet professionally recognized standards of health care. In addition, advisory opinions are available regarding the civil money penalty provisions of section 1128A of the Act, which authorizes penalties for a variety of acts, including, among others, presentation of a false or fraudulent Medicare or Medicaid claim and hospital payments to physicians to induce them to reduce or limit care to any Medicare or Medicaid beneficiary under their direct care.

B. OIG Interim Final Regulations

Because HIPAA required that specific procedures and final regulations on the advisory opinion process be in place by February 21, 1997, the Secretary determined that it was both impracticable and contrary to the public interest to first issue regulations in proposed rulemaking form. As a result, on February 19, 1997, the OIG published interim final regulations (62 FR 7350) establishing a new part 1008 in 42 CFR chapter V addressing the various procedural issues and aspects of the advisory opinion process. Specifically, the interim final rule set forth (1) the procedures to be followed by parties applying for advisory opinions and by the OIG in responding to these requests; (2) the time frames pursuant to which the OIG will receive and respond to requests; (3) the type and amount of fees to be charged to requesting parties; and (4) the manner in which the public will be informed of the issuance of any advisory opinions.

The interim final rule also set forth a 60-day public comment period for specific comments and recommendations for refining the advisory opinion process.

C. Summary of the Interim Final Rule

The establishment of a new part 1008 in 42 CFR chapter V specifically addressed, among other provisions, the following procedural aspects of the advisory opinion process:

1. Responsibilities of Outside Parties

Section 1008.15 of the interim final rule indicated that any individual or entity may submit a request for an advisory opinion, but that the arrangement in question must, at the time of the request for an opinion, either be in existence or be an arrangement into which the parties have a good faith intention to enter in the future.[2] Section 1008.15(b) stated that requests presenting general questions of interpretation, posing hypothetical situations, or seeking an opinion about the activities of third parties would not qualify for advisory opinions. Section 1008.11 stated that the OIG would not provide advisory opinions to persons not involved directly in the arrangement. In addition, §§ 1008.53 and 1008.55(b) of the rule stated that an advisory opinion would be legally binding on the Department and the requesting party only with respect to the specific conduct of the requesting party; it would not be legally binding with respect to third party conduct, even if such conduct appears similar to the conduct of the initial requestor.

Section 1008.36 of the interim final rule indicated that a request for an advisory opinion must be submitted to the OIG in written form and must present all facts relevant to the subject matter for which the opinion is being requested. Section 1008.37 provided that all parties and potential parties to the arrangement must be identified.

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[1] Public Law 104–191 erroneously cited this provision as section 1128B(b) of the Act. Section 4331(a) of the Balanced Budget Act of 1997, Public Law 105–33, corrected this citation to section 1128A(b) of the Act.

[2] Any individual or entity may submit a request for an advisory opinion. However, we anticipate that most requests will apply to health care business arrangements. Therefore, for purposes of this discussion, we will generally use the term ''arrangement'' to refer to the factual circumstances about which an advisory opinion is requested, even though we realize that some requests will involve facts not related to a business arrangement.

Section 1008.38 of the regulations required the requesting party to certify to the truth, correctness, and completeness of all information submitted to the OIG, to the requestor's best knowledge. It also required a requesting party seeking an advisory opinion about a proposed arrangement to certify its good faith intent to enter into the arrangement upon receipt of a favorable advisory opinion.

Section 1008.18 of the interim final rule provided that requestors may contact the OIG directly to inquire about the type and scope of information needed to process their requests, and that the OIG could provide requestors with a list of suggested preliminary questions to aid in formulating their requests. As set forth in § 1008.39, at any time after the preliminary request for an advisory opinion, the OIG may request additional information that the OIG deems necessary to address the advisory opinion request.

2. Fees To Be Charged

In accordance with HIPAA, subpart C of 42 CFR part 1008 of the regulations addressed fees for the cost of advisory opinions. Specifically, § 1008.31 of the regulations stated that the OIG will charge a fee to the requestor (payable to the U.S. Treasury) equal to the costs incurred by the Department in responding to the request. The regulations stated that the fees will factor in the salary, benefits, and overhead costs of attorneys and others who work on analyzing the request and writing the advisory opinion. Because processing fees will vary according to the complexity of the request and the time needed to prepare the response, the rule did not establish specific processing costs in advance. The interim final rule's preamble discussion, however, contains broad estimates of costs and staff time to aid prospective requestors.

3. Responding to the Advisory Opinion Request

Subpart E of the interim final rule addressed the obligations and responsibilities of the OIG in accepting and issuing formal advisory opinions. Section 1008.41 specifically indicated that the OIG would promptly examine the request for an advisory opinion upon receipt and determine whether additional information would be required. The regulations established that within ten (10) working days of receiving the request, the OIG would notify the requestor in writing that (i) it was formally accepting the request, (ii) it was declining to accept the request, or (iii) it needed additional information to process the request.

In accordance with § 1008.43(c) of the rule, once sufficient information is provided to the OIG, the OIG will consult with DoJ and issue an advisory opinion within sixty (60) days after formally accepting the advisory opinion request. Section 1008.45 of the regulations addresses the OIG's right to rescind an advisory opinion after its issuance in limited circumstances.

4. Dissemination of Advisory Opinions

Section 1008.47 of the interim final rule addressed the circumstances under which the OIG may disclose information submitted by requestors, including making copies of issued opinions available for public inspection and on the OIG's Internet web site.[3]

II. Response to Comments and Summary of Revisions

As indicated above, the interim final rule established a 60 day comment period for soliciting relevant public comments on the scope and applicability of the provisions set forth in 42 CFR part 1008. We received a total of twenty (20) timely-filed public comments from various health care associations and organizations and from several State and professional medical societies. The comments included both broad concerns about the issuance of advisory opinions in general and more detailed comments on specific aspects of the advisory opinion process. In addition, based on informal discussions with potential requestors and experience gained in reviewing and processing advisory opinion requests since issuance of the interim final rule, the OIG is using this opportunity to clarify portions of the regulations consistent with the statute and the intent of this procedural rulemaking. Set forth below is a synopsis of the various comments received and a summary of the specific revisions and clarifications being made to the regulations in 42 CFR part 1008.

A. General Comments

Comment: Many commenters welcomed the prospect of advisory opinions and expressed general support for the advisory opinion process established by the interim final rule. One commenter indicated that the interim final rule is an attempt ''to develop an effective advisory opinion process as a method of bringing clarity to the current Federal fraud and abuse statutory and regulatory system.'' Another commenter stated that the interim final rule was a ''positive step in the right direction.'' A third commenter, reflecting the view of several, stated that ''the best deterrent to fraud and abuse in the health care industry is clear guidance from the Government concerning its view of the applicable requirements.''

The general support of these remarks notwithstanding, these commenters and others expressed concerns about the advisory opinion process. Several commenters viewed the regulations as overly restrictive and complex. Commenters stated that the requirements for submitting substantial amounts of supporting information would dissuade parties from seeking advisory opinions. One commenter stated that other agencies rendering advisory opinions have less onerous requirements, citing the DoJ Antitrust Division Procedures for Business Review Letters, 28 CFR 50.6, and the Federal Trade Commission (FTC) Advisory Opinion Procedures, 16 CFR 1.1 through 1.4. This commenter and others believed that the OIG advisory opinion process could be simplified without compromising the OIG's position. One commenter suggested that the requirements, which it perceived as burdensome, reflect the OIG's opposition to issuing advisory opinions during the legislative process.

Response: The OIG intends to carry out Congress' mandate in good faith and to the best of our ability. We are hopeful that an effective advisory opinion program will further the OIG's fraud-fighting mission by aiding requestors in complying with the fraud and abuse laws. Deterring fraud and abuse in the Federal health care programs continues to be an integral part of that mission. For example, the OIG special fraud alerts and model compliance plans are specifically targeted at deterring fraudulent and abusive activities. Consistent with the OIG mission, we endeavored to develop an advisory opinion process that balances the industry's desire for a process that is not overly burdensome with the OIG's need for full and complete disclosure of facts pertaining to the arrangements under review.

Our goal is to render meaningful and informed opinions based on a complete and comprehensive understanding of the relevant facts and circumstances of a given arrangement, protecting in the process only those arrangements that pose little or no risk of fraud or abuse to the Federal health care programs. For complex arrangements, this may require relatively extensive submissions by a requestor. We believe that it is difficult to develop bright line rules for the

[3] http://www.dhhs.gov/progorg/oig

submission of information uniformly applicable to the wide array of arrangements and sanction authorities that may be the subject of advisory opinions.

The Department is in a unique position among agencies of being compelled by statute to provide advisory opinions that bind the Department and the requestors in criminal, as well as civil, matters. The Department must issue these opinions within a sixty (60) day period, regardless of the complexity of the arrangement in question. Accordingly, the OIG has a heightened need to scrutinize arrangements closely to assure that fraudulent or abusive arrangements are not inappropriately granted protection from sanction.

As we gain experience in issuing advisory opinions, we will continue to look for ways to simplify the process. Presently, we are revising these regulations to provide increased flexibility to respond to the circumstances of individual situations. As described in greater detail below, these changes include, among others, expressly permitting submission of requests by counsel; allowing submission of drafts, models, or narrative descriptions of operative documents for proposed arrangements; providing for informal consultation with requestors to aid the OIG's deliberative process; and providing for notice, an opportunity to respond, and a reasonable unwinding period in the unlikely event of termination of a favorable advisory opinion. In addition, these regulations add a procedure for obtaining initial non-binding fee estimates.

Comment: One commenter recommended that the OIG publish generic standards and criteria by which the ''case specific'' safe harbors afforded by advisory opinions would be granted. The commenter believed that without the promulgation of such standards and criteria, the advisory opinion process could be viewed as arbitrary and capricious.

Response: These regulations are designed to establish procedures for obtaining advisory opinions that will provide the public with meaningful advice regarding the anti-kickback statutes and other OIG sanction authorities as applied to specific factual situations. The statutory and regulatory safe harbors to the anti-kickback statute describe generalized, hypothetical arrangements that are protected. In contrast, an advisory opinion is a means of relating the anti-kickback statute, as well as other OIG sanction authorities, to the facts of a particular arrangement. There are likely to be factors that make some specific arrangements appropriate for a favorable advisory opinion, even in subject matter areas where a generalized safe harbor may be impractical. Thus, we believe that particularized or ''case specific'' safe harbor treatment is appropriate where the specific arrangement contains limitations, requirements, or controls that give adequate assurance that Federal health care programs cannot be abused. Our use of the phrase ''particularized'' or ''case specific'' safe harbors refers simply to a determination by the OIG, in the exercise of prosecutorial discretion, not to impose sanctions for specific arrangements that may constitute technical violations of OIG authorities.

B. Specific Comments on the Advisory Opinion Process

Section 1008.1, Basis and Purpose

Comment: A number of commenters suggested that requiring a requestor to be a party to the arrangement, or proposed arrangement, that is the subject of a request appears to prevent an attorney from requesting an advisory opinion on behalf of a client.

Response: We recognize that many requesting parties will employ attorneys to assist them in preparing advisory opinion requests. We believe that it is appropriate for an attorney, acting as counsel, to submit an advisory opinion request on behalf of a client, provided that the client is a proper requesting party in all respects under these regulations. This means that the client itself must comply with all requirements for being a proper requesting party under these regulations, including, but not limited to, the requirements under § 1008.36 that the requesting party be specifically identified, and under § 1008.38 that the requesting party provide certain certifications (these certifications must be signed by the client, not by the attorney). Section 1008.1 is being clarified accordingly.

Section 1008.5, Matters Subject to Advisory Opinions

Comment: One commenter requested that we clarify the meaning of the term ''authority'' as we used it in our preamble to the interim final rule at page 7352. Specifically, the preamble stated:

> ''To the extent that the subject matter of the request is the requestor's potential liability under one sanction authority, we believe the request should provide a complete description of the facts addressing the elements of that authority. Under these interim final regulations, if the request asks the OIG to advise on whether an arrangement is subject to sanction under more than one legal authority, we believe the submission should include a complete description of the facts regarding the different sanction authorities in those statutes.''

Response: We agree with the commenter that clarification of our use of the term ''authority'' would be helpful. ''Authority,'' as used in the interim final rule preamble cited above, refers to each separate sanction authority enumerated in sections 1128, 1128A, 1128B of the Act, i.e., each potential ground for exclusion, civil money penalty, or criminal penalty. The section 1128, 1128A, and 1128B sanction authorities cover a wide range of conduct, from kickbacks to false claims to doing business with sanctioned persons. It is unlikely that any one arrangement that is the subject of an advisory opinion would implicate all of the section 1128, 1128A, and 1128B sanction authorities. Because it is most familiar with the circumstances of its arrangement, a requesting party is in the best position, as an initial matter, to identify those authorities that may be implicated in its arrangement and thus expedite processing of its advisory opinion request. Accordingly, when submitting advisory opinion requests, requestors should identify the specific sanction authority or authorities within sections 1128, 1128A, and 1128B of the Act about which they seek an advisory opinion and should describe the facts relevant to each identified authority. Requesting parties may seek an advisory opinion on all sanction authorities they believe may be implicated by their arrangements. However, a blanket designation that a party seeks an advisory opinion on sections 1128, 1128A, and 1128B of the Act, without more specificity, is likely to elicit an OIG request for substantial additional information and delay processing of the advisory opinion. For these same reasons, requestors seeking opinions on compliance with the anti-kickback safe harbors should specify those safe harbors they believe may apply to their arrangements. We have revised the regulations to require designation of the specific sanction authorities about which an advisory opinion has been requested.

Comment: In HIPAA, Congress enacted a new statutory safe harbor to the anti-kickback statute for certain shared-risk arrangements (section 1128B(b)(3)(F) of the Act). This safe harbor is the subject of an on-going negotiated rulemaking process mandated by HIPAA and being

conducted under the auspices of the OIG. The goal of the negotiated rulemaking is the promulgation of regulations governing the safe harbor. One commenter expressed the view that the OIG should not withhold advisory opinions on the shared-risk exception pending the outcome of the negotiated rulemaking.

Response: We discern nothing in HIPAA that permits us to decline to give advisory opinions on the shared-risk safe harbor pending the outcome of the negotiated rulemaking and promulgation of applicable regulations. Accordingly, we will opine on the statute as written. Any advisory opinion issued will be binding on the Department and the requesting parties as provided in these regulations. However, favorable and unfavorable advisory opinions issued before the outcome of the rulemaking process may be subject to modification or termination based on the rule eventually promulgated.

Comment: Two commenters believed that the OIG advisory opinions should address the application of the ''Stark amendment'' under section 1877 of the Act.

Response: Section 4314 of the Balanced Budget Act of 1997, Public Law 105–33, includes a new requirement that the Department issue advisory opinions on the ''Stark'' provisions. These opinions will be issued by the Health Care Financing Administration (HCFA) in accordance with regulations issued by the Department. To aid in coordinating both advisory opinion processes, we are modifying our regulations to require requesting parties to notify the OIG if they apply to HCFA for a ''Stark'' opinion on the same arrangement for which they are seeking an OIG advisory opinion.

Section 1008.15, Facts Subject to Advisory Opinions

Comment: Several commenters suggested that trade associations should be permitted to seek advisory opinions on behalf of their members. These commenters assert that such requests would benefit association members who may not have sufficient resources to obtain an advisory opinion independently. One commenter noted that trade association opinions would be particularly valuable for arrangements involving ''national issues.'' Several commenters also suggested that we issue advisory opinions about ''model'' arrangements that might be duplicated by many individual entities and that we issue non-binding opinions or business guidance to individual parties and trade associations similar to advice provided by the FTC and DoJ on antitrust matters.

Response: Section 205 of HIPAA contemplates advisory opinions regarding arrangements currently existing or proposed by specific, identified requestors. This follows from HIPAA's mandate that advisory opinions be binding on the parties, as well as the Department. It is difficult to discern how an advisory opinion issued to a trade association could be made binding for association members or others who later implement an arrangement described in a trade association request. The same difficulty would arise with respect to parties attempting to duplicate protected ''model'' arrangements. HIPAA's requirements notwithstanding, it is unlikely that a party could precisely duplicate an approved arrangement; invariably, there would be differences, some of which might be significant. Sanction authorities impose liability based on acts by specific people in particular factual circumstances. Thus, a particular arrangement may be legal with respect to one party, but not with respect to another. We believe that it is impossible to identify all hypothetical factors that might lead to different results.

We will continue, however, to offer other industry guidance in the form of safe harbor regulations and special fraud alerts. As part of the OIG's expanded fraud-fighting efforts, we are actively working to finalize the existing proposed safe harbors, to issue new special fraud alerts, and to consider new safe harbors proposed by the public. In accordance with HIPAA, we will formally solicit public comments annually regarding new proposals for safe harbors and special fraud alerts. However, we welcome written comments from the public at any time regarding these topics or other fraud and abuse concerns.

Section 1008.31, Oig Fees for the Cost of Advisory Opinions

Comment: We received several comments regarding the fee provisions of the regulations. A number of commenters objected to the OIG charging a fee for processing an advisory opinion. These commenters believed that a fee would deter some requesting parties and would impose an undue burden on small companies.

Response: Under section 205 of HIPAA Congress directed that the Department charge a fee equal to the costs incurred by the Department in processing an advisory opinion (42 U.S.C. 1320a–7d(b)(5)(B)(ii)).

Comment: Many commenters believed that the amount of the fee charged for an advisory opinion should be limited. These commenters contend that uncertainty about the ultimate fee to be charged for an opinion will be especially problematic for individuals and small entities. Several commenters suggested that the ''triggering dollar amount'' provided for in the interim final rule, permitting requestors to designate the maximum fee they are willing to incur, does not adequately address the problem of unlimited fees, although some commenters generally supported the concept and advocated its retention. One commenter observed that once the triggering dollar amount is reached, a requesting party ''is faced with the untenable decision of paying the triggering dollar amount and receiving nothing to show for its money, or authorizing the OIG to proceed to process the request regardless of the cost.'' Many commenters suggested that the solution to this dilemma would be for the OIG to provide a fee estimate based on an initial review of the request. Commenters essentially proposed two types of estimates: (1) an initial estimate, with a cap on the final fee equal to a certain percentage above the original estimate (for example, 110% of the original estimate), or (2) a non-binding estimate combined with continued use of the triggering dollar amount designation, which designation could be amended based on the non-binding estimate. Additionally, four commenters suggested that the OIG adopt a fixed fee schedule similar to the one used by the Internal Revenue Service (IRS) for processing private letter rulings.

Response: In light of our limited experience with the advisory opinion process, at this time we believe that a binding estimate with a percentage cap would be contrary to section 205 of HIPAA, which requires recovery of actual costs incurred. We do not have enough experience to estimate actual costs with sufficient reliability to make such estimates binding. Similarly, it is not possible at this time to develop fee schedules that would reflect actual costs. As the OIG gains experience, we may be able to provide binding estimates or fee schedules; nothing in these regulations precludes us from revising these proposals at a later date if circumstances warrant.

Until such time, we believe that providing an initial, non-binding estimate is reasonable and feasible. Accordingly, we are revising the regulations to provide for a non-binding, good faith estimate, if requested, based on an initial review of an advisory

opinion request. This initial estimate will be provided at the time an advisory opinion is accepted. However, we will toll processing of the advisory opinion request from the date of acceptance of the request until the requesting party authorizes us in writing to continue the processing. This tolling will enable requesting parties who find that the estimated fee is more than they wish to spend to withdraw their requests before incurring additional costs. We are retaining the triggering dollar amount designation procedures and providing for revised designations in response to our non-binding fee estimates. We note that fees for advisory opinions issued to date generally have been in the range of $1,500 to $3,000, with several costing considerably less.

Comment: Some commenters believed that not all requestors may be able to afford advisory opinions. One commenter suggested that the OIG use a sliding fee schedule based on after-tax net profits of the requestor. Further, one commenter believed that the $250 deposit was excessive for individuals and small entities making simple requests for which the costs might not total $250, i.e., requesting confirmation of the applicability of an existing opinion to a new participant in the arrangement. Another commenter urged the OIG to notify the requestor prior to processing an advisor opinion if the processing costs are likely to exceed the designated triggering dollar amount to permit requestors who do not wish to pay more than the designated amount to withdraw their requests before incurring costs.

Response: Section 205 of HIPAA contains no financial hardship exception to the mandate that the Department collect a fee equal to the costs incurred by the Department. Even if there were such an exception, the proposal for a sliding scale based on a requestor's after-tax net profits strikes us as impractical to calculate and administer. It is unclear how such a system would apply to individual requestors or non-profit organizations. The $250 initial deposit represents the OIG's reasonable assessment of the minimum processing costs for advisory opinion requests. Every request for an advisory opinion takes time to read and analyze to ensure that the OIG has an accurate understanding of the facts submitted and the application of the fraud statutes to those facts. The OIG must then consult with DoJ and write the actual advisory opinion. Our experience thus far demonstrates that it is unlikely that even the simplest advisory opinions will cost the agency less than $250. Where possible, we will try to notify requestors informally if, as an initial matter, we believe that their designated triggering dollar amounts are likely to be exceeded.

Comment: One commenter suggested that the OIG notify requestors if experts for which costs will be incurred will be required.

Response: Section 1008.33 of the interim final rule provided for notice to requestors, with an estimate of costs, if expert opinions are required. For purposes of clarity, that provision is being moved to § 1008.31(e). We are further revising the rule to clarify that requestors will be responsible for payment of the actual costs of expert opinions and that the expert's work and opinion will be subject to the sole direction of the OIG regardless of the source of payment.

Section 1008.33, Expert Opinions From Outside Sources

Comment: One commenter suggested that requestors should be permitted to review and comment on expert opinions from outside sources, and should be given an opportunity to provide their own expert opinions.

Response: Nothing in the regulations precludes a requestor from submitting an expert opinion if they so desire. In addition, the OIG can solicit a requestor's views on expert opinions if the OIG believes such input would aid its deliberative process. However, we do not believe that it is necessary or cost-efficient to require the OIG to consult with requestors regarding expert opinions in all cases.

Subpart D, Submission of a Formal Request for an Advisory Opinion

Comment: Subpart D of these regulations enumerates the information requestors must submit with their advisory opinion requests. A number of commenters found the requirements of this subpart overly burdensome and likely to dissuade parties from seeking advisory opinions. These commenters expressed the view that the advisory opinion process was not intended as a preliminary enforcement tool by which the OIG could collect large quantities of information about providers and other health care entities.

Response: The procedural requirements set forth in this subpart are intended to ensure that the OIG has a complete record on which to base its advisory opinion, which will bind the Department and the parties. An advisory opinion serves as an individualized safe harbor against criminal and civil penalties; therefore, it is incumbent upon the OIG to conduct a thorough review.

Section 1008.36, Submission of a Request

Comment: Several commenters stated that requesting parties should not be required to provide extensive information about potential participants in an arrangement who are not actual requestors. One commenter expressed the view that the focus of an advisory opinion should be on the factual circumstances of an arrangement, not on the identities of the parties. Additionally, several commenters believed that sometimes it would be impossible or highly impractical to identify all potential participants to an arrangement. According to their concerns, some arrangements might involve hundreds or even thousands of parties. One commenter cited as an example a request involving all network providers in a managed care plan. The commenter explained that there might be practical difficulties in identifying all such providers; moreover, the problem could be further complicated if the roster of providers were subject to change as a direct result of implementation of the arrangement.

Response: We believe that the identity of parties is sometimes important to rendering an informed decision about an arrangement. There may be different implications under the sanction authorities for different parties in similar factual circumstances. For example, the analysis of a proposed joint venture arrangement under the anti-kickback statute may depend on whether or not the proposed investors are potential referral sources or have other business relationships. Furthermore, identification of parties helps the OIG to determine if the arrangement in question or a similar arrangement is the subject of any ongoing investigation or is, or has been, the subject of a governmental proceeding. As stated in § 1008.15 of these regulations, the OIG will not opine on any matters under investigation.

Section 1008.36(b)(1) requires disclosure of participants to the extent known to the requestor. We agree that there may be situations in which it is not possible or practical to identify all potential participants in an arrangement. In many of these select cases, the OIG may be able to render an informed opinion without knowing the identities of all participants. The managed care network described above might be one such case. Another example might be a proposed pricing arrangement affecting hundreds or thousands of potential customers. In

these types of circumstances, requesting parties should make clear in their requests the reasons why the identities of all potential participants cannot be provided. If it appears to the OIG that the identities of potential participants are reasonably available, the OIG may decline to process the request or may accept the request subject to the subsequent receipt of the identities of potential participants. An advisory opinion issued in such circumstances will be binding only on the requesting party. The requesting party may not be protected by an advisory opinion if the material facts about the unidentified parties differ from the material facts described in the request. For example, if a requestor seeking an advisory opinion about a pricing arrangement describes potential customers as hospitals and the character of the customers is material, a favorable advisory opinion would not be binding on sales to non-hospital customers. Parties joining an arrangement after issuance of an advisory opinion may seek a separate advisory opinion in their own right.

Comment: Several commenters recommended that requestors be permitted to submit anonymous requests, identifying themselves only when it appeared that the OIG would issue a favorable opinion.

Response: Early identification of requestors helps the OIG determine whether the party making the request is under investigation or is involved in proceedings involving the Department or other governmental agencies that would preclude issuance of an advisory opinion under § 1008.15. By making this determination as early in the process as practicable, the OIG can minimize processing fees incurred by requestors.

Comment: Several commenters objected to the required disclosure of the identities of non-requesting parties. Commenters were concerned that such disclosures could undermine the business and competitive interests of all parties to an arrangement. One commenter explained that non-requesting parties may not want to identify themselves in the early planning stages of a transaction, before they are assured that the proposed transaction passes fraud and abuse muster. This is especially true, according to some commenters, because the anti-kickback statute reaches mere offers of prohibited remuneration. Further, they believe there may also be proprietary business reasons for non-requesting parties to withhold their identities. For example, they may be engaged in preliminary discussions and not want to risk being disadvantaged by competitors who may discover their identity. For these reasons, some commenters believed that the OIG should permit generic descriptions of non-requesting parties to the transaction.

Response: For reasons previously stated, we believe that the identities of parties can be essential to rendering an informed opinion about an arrangement. We recognize that some proposed arrangements may be presented to us at an early stage before all parties are fully committed to participate in the arrangement. For example, a group of surgeons planning an ambulatory surgical center may not have commitments from all prospective investors. Requestors in such circumstances run the risk that the OIG response may be rendered meaningless by subsequent changes in the identities of the parties, i.e., a non-referral source party is replaced in an arrangement by a potential referral source. As set forth in § 1008.53, advisory opinions are operative and binding only for requestors. If parties desire protection, they must be identified as requestors. Non-requesting parties seeking protection after the advisory opinion is issued would need to submit a new request for an advisory opinion.

We are mindful that the risk of disclosures of proprietary information may be troublesome from a business perspective. The OIG is subject to the Freedom of Information Act (FOIA), 5 U.S.C. 552, and the Department's FOIA regulations set forth in 45 CFR part 5. The OIG will endeavor to protect submissions of proprietary information to the extent and in the manner permitted by these authorities.

Comment: Several commenters suggested that the OIG not require requestors to provide complete copies of all operative documents. Instead, these commenters advocated permitting detailed descriptions of such documents. In addition, some commenters noted that operative documents may not be available for proposed arrangements and that requiring their preparation would impose significant costs for arrangements that might never be implemented. Commenters also expressed concerns regarding the potential for disclosure of operative documents under FOIA. One commenter asked that the OIG clarify the meaning of the term ''operative documents.''

Response: As used in these regulations, ''operative documents'' broadly encompasses all written documents relevant to the organization or operation of the arrangement in question. These may include, but are not limited to, contracts, leases, lease guarantees, deeds, loan documents (promissory notes, loan agreements, guarantees, mortgages, etc.), employment agreements, court documents and records, settlement agreements, licenses, permits, corporate and partnership organizational documents (articles of incorporation, bylaws, partnership agreements, operating agreements, etc.), and any documents related to these documents. The specific documents required for review of a particular arrangement will depend on the nature of the arrangement.

We are clarifying the regulations to provide that for proposed arrangements, draft or model documents or detailed descriptions of material terms to be contained in such documents may be provided in lieu of operative documents. We caution requestors that material differences between the drafts, models, or descriptions provided and the final operative documents, including changes or omissions, may affect the enforceability of their options. Accordingly, requestors are encouraged to provide full, complete, and accurate information regarding material terms of operative documents for proposed arrangements.

We are further revising these regulations to permit parties to submit initially only those portions of documents relevant to the arrangement at issue. Parties submitting partial documents must clearly identify and describe in general terms those portions that have been withheld. For example, a diversified corporation may elect to submit only those portions of its business plan relating to health care items or services that are the subject of the request. Nothing in these regulations precludes the OIG from subsequently requesting copies of the withheld portions (and from tolling the processing time in accordance with § 1008.39 pending receipt), if the OIG deems those portions necessary in order to render an informed opinion. The ultimate determination of the relevancy of operative documents, or portions thereof, rests in the sole discretion of the OIG.

Comment: One commenter proposed eliminating the requirement that requesting parties provide Medicare and Medicaid provider numbers.

Response: We agree that provider numbers are not necessary in every case. We are eliminating the requirement for submitting these numbers, but reserve the right to request provider numbers, or other identifying information, if we determine that they are necessary in particular circumstances. We have

determined, however, that the Debt Collection Improvement Act of 1996 (section 31001 of Public Law 104–134) requires agencies to collect the Taxpayer Identification Number (TIN) from all persons or business entities ''doing business with a Federal agency'' (see 31 U.S.C. 7701(c)). We believe that requesting, receiving and paying for the OIG's work on an advisory opinion fits into the category of ''doing business with a Federal agency.'' Therefore, a request for an advisory opinion must include the requestor's TIN. The TIN will be used for purposes of collecting and reporting on any delinquent amounts arising out of the requestor's failure to render proper payment for the advisory opinion.

Comment: Five commenters stated that requiring requestors to provide detailed and highly specific information regarding existing or prospective arrangements raises questions about the requesting and non-requesting parties' exposure to sanction in the event of an unfavorable opinion. These commenters considered this potential exposure to be a disincentive to using the advisory opinion process. One commenter explained, for example, that if the OIG determines that an arrangement violates the anti-kickback statute, the requester will have given the OIG much, if not all, of the information necessary to prosecute. This commenter suggested that the OIG adopt a ''grace'' period to allow parties found to be in violation to terminate or restrict an arrangement without risk of prosecution.

Response: There is an unavoidable risk in submitting a request for an advisory opinion regarding the potential applicability of a criminal statute to an existing arrangement. A thorough and detailed understanding of arrangements about which advisory opinions are sought is necessary for the OIG to render an informed opinion. to the extent the arrangement does not qualify for a ''safe harbor'' or a favorable advisory opinion, it is subject to scrutiny and potential investigation. Otherwise, we believe unscrupulous parties could use the advisory opinion process to immunize themselves from prosecution. In most instances, however, we believe the risk to be minimal. First, most requests will be about arrangements that are not yet operative. Second, in seeking an advisory opinion, most requesting parties presumably will have reviewed the arrangement and determined that it poses little risk of fraud and abuse to Federal health care programs. Third, the failure to obtain a favorable advisory opinion does not mean that an arrangement is illegal; it means only that the arrangement may pose some risk of fraud and abuse.

As we have observed in the past, the fact that an arrangement does not qualify for a safe harbor or for a favorable advisory opinion does not mean that the anti-kickback statute has been violated or that an enforcement action is appropriate. For example, in an enforcement proceeding, whether an arrangement in fact constitutes a violation of the anti-kickback statute would depend on a showing of requisite intent to solicit, receive, offer, or pay remuneration to induce referrals or business covered by a Federal health care program.

Comment: We indicated in the preamble to the interim final rule that because of the wide diversity of arrangements about which the OIG might be asked to opine, we could not detail in the regulations all of the information a particular requestor would need to submit. Instead, we provided for the use of suggested preliminary questions, which we would provide, and permitted potential requestors to contact us for further guidance about what information to submit. We specifically solicited comments regarding this approach. One commenter agreed that the information necessary to issue an advisory opinion depends on the nature of the request, and that it is not feasible to set hard and fast rules regarding the specific types of information required to issue an advisory opinion.

Response: We are leaving in place the provision regarding the use of the preliminary questions. Moreover, we will continue to permit potential requestors to contact us in writing for guidance on the specific types of information that might be needed for their particular requests.

Section 1008.37, Disclosure of Ownership and Related Information

Comment: One commenter opposed the requirement that requesting parties disclose ownership and related information on the ground that such requirement is burdensome.

Response: We are not persuaded that this requirement is burdensome. The majority of requestors will likely already be providing this information to HCFA through required filings of HCFA form 1513. A copy of a requestor's current HCFA form 1513 will satisfy this requirement.

Section 1008.38, Signed Certifications by the Requestor

Comment: We solicited comments regarding the certification process outlined in the interim final rule. This process requires requesting parties to certify to the truthfulness of their submissions, including their good faith intent to enter into proposed arrangements. Several commenters viewed the certification requirement as an unnecessary and burdensome requirement not contemplated by section 205 of HIPAA. These commenters stated that the certification requirement is unnecessary because the OIG is not bound by an advisory opinion if it later discovers that a requestor did not fully and accurately disclose information. One commenter suggested that we replace the certification requirement with a provision stating that the protection afforded by an advisory opinion would be applicable only to the arrangement as described in the request and only to the extent implemented by the requestor in accordance with the facts represented in the request. Another commenter believed that certifications were unnecessary, because the advisory opinion process itself is a complicated and costly procedure adequate to deter providers from seeking advisory opinions on arrangements that are hypothetical or not under serious consideration.

Response: The required certifications help ensure that the OIG's time and resources are spent addressing real concerns of legitimate requestors. In particular, the requirement that requestors seeking advisory opinions about proposed arrangements certify to a good faith intent to enter into the proposed arrangement safeguards against abuse of the advisory opinion process by requestors seeking opinions about competitor's practices or hypothetical questions. We are not persuaded that our ability to invalidate an opinion upon later discovery of discrepancies in the facts or implementation is a sufficient or efficient means of protecting against improper or inappropriate requests. In addition, we are not convinced that the advisory opinion process is so costly or complex as to thwart misuse of the process.

As a practical matter, our experience suggests that the certification requirement benefits requesting parties as well. The requirement serves as an incentive to requestors to focus on the completeness and accuracy of their presentations and to research

thoroughly and document their arrangements before submitting their requests or submitting additional information. We believe that this keeps costs down and expedites issuance of opinions by reducing our need to request clarifications and additional information. Additionally, enhanced diligence should reduce the need for ancillary opinions after issuance of the original advisory opinion when new facts or understandings surface that were not fully investigated or considered by the requestor at the time of the initial request. Consequently, we believe that certifications will help ensure more meaningful and informed opinions.

We are clarifying the certification requirements in § 1008.38 in two ways. First, we are adding a provision, inadvertently omitted from the interim final rule, designating the appropriate signatory on behalf of requestors that are limited liability companies. Second, we are clarifying that each requesting party must provide the required certification. These certifications must be signed by the requesting party, not by its attorney.

Comment: Several commenters objected to the requirement for certification of a good faith intent to enter into an arrangement upon receipt of a favorably advisory opinion. These commenters argue that there may be legitimate business reasons, unrelated to the fraud and abuse determination, that an arrangement is not consummated. For example, seeking an advisory opinion may be part of the parties' initial feasibility determinations. Commenters explained that in the fluid and changing health care marketplace, many legitimate business factors may arise between the time a request is filed and the advisory opinion is issued would cause the parties to abandon their proposed arrangements. One commenter questioned what action the OIG would or could take if an arrangement described in a favorable advisory opinion is not implemented. Several commenters urged that failure to implement an approved arrangement should not subject a requestor to any adverse action or inference.

Response: We continue to believe that requiring a good faith intent to enter into a transaction is a reasonable safeguard against misuse of an advisory opinion process. The certification requirement as set forth in these regulations does not preclude abandonment of a proposed arrangement for legitimate business reasons (i.e., an investor withdraws, financing becomes unavailable) that were not reasonably foreseeable at the time the certification was signed.

Comment: One commentor requested that we revise § 1008.38 to accommodate a change in the individual signing additional certifications if, for example, the requestor hires a new chief executive officer while the advisory opinion is pending.

Response: The person signing certifications on behalf of a requestor should be the person occupying the position listed in § 1008.38(c). We are clarifying this section to make clear that changes of the type described by this commentor are allowed.

Section 1008.40, Withdrawal

Comment: Three commenters suggested that all documents submitted in support of a withdrawal request should be returned to the requestor.

Response: We do not believe that requesting parties have a right to the return of documents voluntarily submitted to the Government. In particular, there is no right to the return of potential evidence of a violation of law, and the Government would be remiss in returning such information. In addition, it may be necessary to retain submitted materials to document the workings of the advisory opinion process. Nevertheless, although the OIG reserves the right to retain documents submitted by requestors, nothing in these regulations precludes the OIG from returning documents in its discretion to the extent allowed by law. Parties should note that as part of OIG's required consultation with DoJ, copies of requests and related documents may be sent to DoJ. The OIG can make no representation as to return of such documents to DoJ.

Section 1008.41, Oig Acceptance of the Request

Comment: We requested comments on the process for screening requests for advisory opinions. One commenter suggested that instead of screening and rejecting incomplete requests, such requests should be accepted contingent on receipt of the missing information, and the processing time should be tolled until the missing information is submitted. This commenter explained that in the dynamic health care marketplace, all information may not be available at the time of the request. Another commenter maintained that § 1008.41(b)(3), which provides for formally declining a request, is unnecessary and should be deleted.

Response: We disagree that § 1008.41(b)(3) is unnecessary. There may be circumstances in which a request must be declined in accordance with section 205 of HIPAA, for example, where it seeks a determination of fair market value or asks whether a physician is an employee of a hospital for purposes of qualifying for the employee safe harbor to the anti-kickback statute. However, nothing in these regulations precludes the OIG, in appropriate circumstances, from accepting incomplete requests conditionally, and we have done so in practice.

Comment: One commenter suggested that the OIG should provide a written statement of reasons for declining a request.

Response: In order to make the advisory opinion program meaningful, it has generally been our practice to inform requestors of the bases for declining to issue a requested advisory opinion, particularly in situations where the requestor may be able to correct or modify a request so as to make it acceptable. Section 1008.15 sets forth certain circumstances under which advisory opinions will not be issued. We are taking this opportunity to clarify in the rule that the circumstances set forth in § 1008.15 preclude both acceptance and issuance of advisory opinions. In addition, requests will not be accepted if they fall outside the scope of the advisory opinion process, as set forth in § 1008.5, or otherwise fail to satisfy the technical requirements of these regulations.

Section 1008.43, Issuance of a Formal Advisory Opinion

Comment: Several commenters suggested that requestors be given an opportunity to meet with the OIG during processing of requests to answer questions and address any concerns the OIG might have about their arrangements. Commenters proposed that the OIG provide prior notice to requestors if the OIG determines that it is going to issue an unfavorable opinion, thus permitting requestors to withdraw their requests or make changes to their proposed arrangements to address OIG objections.

Response: Our experience with advisory opinions has demonstrated that informal oral consultation with requestors often aids our understanding of the arrangements at issue and better enables us to render meaningful and informed opinions. However, requiring consultation for every request would impose an unwarranted burden on the OIG and, in many cases, serve only to increase costs to requesting parties with no significant benefit to the process. Nothing in these regulations precludes informal consultation, and we intend to continue working with requestors in appropriate circumstances to facilitate the advisory opinion process. During

these informal consultations, we may identify concerns that, if not adequately addressed by the requestor before the advisory opinion is issued, may lead us to render an unfavorable opinion. However, it is not our role to structure business arrangements. We believe that parties needing such assistance should seek private business and legal guidance.

We are aware that some requestors may want an opportunity to address the OIG's concerns about their arrangements in a manner that would enable them to structure acceptable arrangements and avoid, where possible, an unfavorable outcome. A formal notification requirement, however, could permit unscrupulous parties to misuse the advisory opinion process to ''test'' hypothetical arrangements, as well as lead to inefficient use of the OIG's resources. We believe that the informal consultation process described above is a better approach and will more effectively address the concerns of requestors who may want an opportunity to modify their arrangements in response to the OIG's concerns.

While requestors may request informal consultations, we anticipate that we will initiate most consultations when we determine that the requestor's input would be helpful. If there are facts or issues that a requestor wants us to consider, the requestor should bring those facts or issues to our attention (and provide any desired explanation) either in its request for an advisory opinion or, if the facts or issues arise after the initial request, in a supplemental submission of additional information.

Additional material information provided in the course of oral consultations will need to be submitted in writing and certified in accordance with §§ 1008.38 and 1008.39. For purposes of calculating the time for issuing the opinion, if the additional information substantially changes the arrangement under consideration, the original request will be treated as having been withdrawn and a new request as having been resubmitted as of the date the OIG receives the additional information in writing.

Comment: Several commenters proposed that the OIG be required to explain its analysis and bases for decision in the written advisory opinion, since the analysis and reasoning will serve as useful guidance to the requestors, the Department and the health care industry.

Response: As indicated in the preamble to the interim final rule, advisory opinions will restate the material facts known to the OIG and will discuss the OIG's analysis and conclusions regarding the legal questions to be applied to the facts presented. We believe that § 1008.43, as written, reflects this intent. We iterate that opinions are only binding upon the specific parties to whom they are issued.

Comment: One commenter suggested that changes made to an arrangement to correct aspects deemed objectionable by the OIG in an unfavorable advisory opinion should not require an additional advisory opinion in order to be protected.

Response: We are not persuaded that this suggestion is workable in practice. We are unwilling to rely on a determination by the parties that modifications or changes they have made to their arrangements correct in all respects those aspects to which we objected. Moreover, we could not be certain, without further review, that modifications or changes made to one aspect of an arrangement would not adversely impact some other aspect of the arrangement. We are mindful, however, that requestors want to minimize costs associated with requesting a second opinion. We will make a good faith effort to control costs of a subsequent advisory opinion by avoiding duplication of effort expended on the first advisory opinion to the extent possible.

Section 1008.45, Rescission

Comment: The OIG received many responses to its solicitation of comments regarding whether § 1008.45 reasonably balances the Government's need to ensure that advisory opinions are legally correct and the requestor's interest in finality of advisory opinions. Most commenters were concerned that the OIG's authority to rescind advisory opinions defeats the main purpose of obtaining an opinion, which is to ensure that an arrangement will not be subject to sanction under the fraud and abuse statutes. Several commenters urged the OIG to identify a narrower standard to be applied in deciding to rescind an advisory opinion than ''in the public interest''. These commenters indicated that rescission should be limited to changes in law or material facts. Some commenters objected to using good faith reliance on the request as the standard for enforcement proceedings, suggesting instead that the OIG not proceed against a requestor unless the requestor failed to disclose materially adverse facts. One commenter thought that the OIG should not require parties to unwind transactions unless the OIG had not been provided with all relevant information or the information provided was misleading or inaccurate. If unwinding were to be required, several commenters urged the OIG to permit a reasonable unwinding period during which a requestor would not be subject to sanction. Further, several commenters noted the significant investment of time and money involved in arrangements operating under the protection of advisory opinions. It was suggested that the OIG limit the use of rescinded opinions to putting parties on notice that the OIG has changed its analysis for the future. Another commenter recommended that the OIG's right to rescind an advisory opinion should be limited to one year from the date of the opinion.

Response: In crafting these regulations, we have been mindful of a requestor's significant interest in the finality of an advisory opinion and have endeavored to balance that interest against the government's compelling interest in protecting the integrity of the Federal agencies, including the Federal Trade Commission, the International Trade Commission, the Food and Drug Administration, and the Internal Revenue Service (See, for example, 16 CFR 1.1.3, 19 CFR 211.54(b), 21 CFR 108.5, and 26 CFR 601.201(1).)

Our use of the words ''rescind'' and ''revoke'' in § 1008.45 may have led some members of the public to misconstrue the intent of this section. If a requestor has fully and accurately provided all material information regarding an arrangement in its submission to the OIG, its advisory opinion will bind the Department and the parties during the period it is in effect, that is, until it is terminated, if ever. If, on the other hand, the OIG determines that a requestor's submissions did not fully and accurately provide all material information regarding an arrangement, the OIG may rescind the advisory opinion retroactively to the date of issuance. For purposes of clarity, we are substituting the word ''terminate'' for ''revoke'' where appropriate in this section, to more clearly distinguish these two concepts. In addition, as discussed below, we are amending § 1008.45 to make clear that in appropriate cases there is a third, intermediate possibility which is modification of an advisory opinion.

Accordingly, for the purposes of part 1008 we are adding definitions in § 1008.45 for the terms ''rescind,'' ''terminate,'' and ''modify.'' To ''rescind'' an advisory opinion will mean that the advisory opinion is revoked retroactively to the original date of issuance with the result that the

advisory opinion will be deemed to have been without force and effect from the original date of issuance. Rescission will be reserved for those situations where a requestor has not fully, completely and accurately disclosed facts to the OIG that it knew, or should have known, were relevant and material to the subject matter of the advisory opinion. (The OIG will make the determination of whether the requestor had this state of mind following an opportunity for the requestor to comment on this issue.)

To ''terminate'' an advisory opinion will mean that the advisory opinion is revoked as of the termination date and is no longer in force and effect after the termination date. However, the opinion will have been in effect as originally issued from the date of issuance until the date of termination.

To ''modify'' an advisory opinion will mean that the advisory opinion is amended, altered or limited, and that the advisory opinion continues in full force and effect in modified form thereafter. However, the opinion will have been in effect as originally issued from the date of issuance until the date of modification.

The regulations reserve the right of the OIG to rescind, terminate, or modify an advisory opinion after its issuance solely in circumstances ''where the public interest requires.'' We expect that rescissions, terminations, and modifications of advisory opinions will be rare, occurring only in limited circumstances, such as when the OIG learns after the issuance of the opinion that the arrangement in question may lead to fraud or abuse, and the potential for such fraud or abuse was not foreseeable at the time the advisory opinion was issued. Situations that might lead to termination or modification of an advisory opinion may include the following circumstances—

- changes in the law or the business operations of the health care industry that make it possible for an arrangement that previously carried little risk of fraud or abuse to result in fraud or abuse in the future;
- changes in medical science or technology that render an arrangement subject to the risk of fraud or abuse;
- material changes in the arrangement during the course of its implementation; or,
- the operation of the arrangement in practice differs from what the OIG anticipated based on the advisory opinion request.

The latter two examples reflect the fact that proposed business arrangements sometimes change in unexpected ways during and after their implementation.

Prior to any rescission, termination or modification, the OIG will notify the requesting party that it intends to rescind, terminate, or modify the advisory opinion and afford the requesting party a reasonable opportunity to comment in response. An advisory opinion will only be rescinded, terminated, or modified after appropriate consultation with the requesting party. With respect to modifications, if the party does not agree to modifications proposed by the OIG, or does not itself suggest modifications that satisfy the OIG's concerns, the OIG may instead terminate the advisory opinion under this section. In the event of a determination to rescind, terminate, or modify an advisory opinion under § 1008.45, the OIG will notify the requestor and make such final notice available to the same extent as an advisory opinion.

Except as discussed below, the requestor will not be subject to OIG sanction for actions it took prior to the final notice of termination or modification if the requestor (1) acted in good faith reliance on the advisory opinion, and (2) promptly discontinues such actions upon notification of a termination or promptly modifies such actions upon notification of a modification, as the case may be. We recognize that it may be impracticable to discontinue immediately certain complex business arrangements. Accordingly, except in exceptional circumstances or as otherwise described below, a requestor will be afforded a reasonable opportunity to unwind or otherwise disengage from arrangements subject to terminated advisory opinions, provided that the requestor pursues such unwinding or disengagement promptly, diligently and in good faith. A requestor will be afforded a similar reasonable opportunity to implement modifications to an arrangement that is subject to a modified advisory opinion. During any unwinding period, the protection afforded by the advisory opinion will continue in effect.

We are revising § 1008.45 to provide for a reasonable unwinding period set at the discretion of OIG, after consultation with the requestor, based on the facts and circumstances of the arrangement. For example, the unwinding period for a complex business structure may be a period of years, whereas it may be a much shorter period for a simple compensation arrangement. In determining the duration of the reasonable unwinding or modification period, the OIG will take into account the complexity of the arrangements involved and the impact of unwinding or modification of Federal program beneficiaries. If the OIG determines, however, that the requestor failed to provide material information or provided untruthful information in its submissions to the OIG, the advisory opinion will be deemed to have been without effect from the time is was issued and no unwinding period will be recognized.

Comment: One commenter requested that the OIG return documents submitted in connection with rescinded opinions. This commenter argued that such documents should be exempted from FOIA as pre-decisional documents.

Response: As indicated in our discussion of § 1008.40, we do not believe that requesting parties have a right to the return of documents voluntarily submitted to the Government, especially where those documents are potential evidence of a violation of law. In addition, retention of submitted materials may be necessary to document the workings of the advisory opinion process. However, the OIG may return such documents at its discretion to the extent allowed by law. While certain documents may have been provided to DoJ in the course of our consultations, the OIG has no authority over the return of such documents by DoJ. The OIG is subject to FOIA and intends to release documents if required by FOIA, in accordance with procedures set forth in 45 CFR part 5.

Section 1008.47, Disclosure

Comment: Several commenters stated that the disclosure provisions of § 1008.47 do not comport with congressional intent in enacting the advisory opinion program. Several commenters expressed concern about our statement that we could use information submitted by requestors for ''any governmental purpose.'' One commenter specifically stated that if ''any governmental purpose'' means that the OIG can use information submitted with requests as a basis for investigation, the OIG should expressly say so and put parties on notice to that effect. These commenters indicated that the risk of information being used for any governmental purpose would inhibit the industry from seeking guidance, and considered the risk of public disclosure of a requestor's identity and of the result of its advisory opinion as a further deterrent. One commenter believed that such disclosure could adversely impact a requestor's stock prices or general competitiveness.

Response: Our primary purpose under these regulations is to gather and assess information in order to render informed advisory opinions. However, the anti-kickback statute is a criminal statute, and therefore review of arrangements that potentially implicate the statute requires heightened scrutiny. As a law enforcement agency, the OIG cannot ignore information lawfully obtained to further legitimate governmental purposes.

Comment: Several commenters recommended that the OIG redact names and identifying information from published advisory opinions, as the IRS does with its private letter rulings.

Response: Our current practice is to limit public disclosure of names and identifying information, subject to the requirements of FOIA. Unlike the OIG, the IRS has a specific statutory exception (26 U.S.C. 6110) to FOIA that affords it greater latitude in protecting information from disclosure.

Comment: One commenter requested that the OIG not disclose information without first notifying the requestor and obtaining its consent.

Response: The OIG is subject to FOIA and the Department's FOIA regulations set forth at 45 CFR part 5. These regulations provide that the Department will make reasonable efforts to notify submitters—in this case, the requestors—if the Department determines that material that submitters have designated as exempt from disclosure under exemption 4 to FOIA (trade secrets and confidential commercial or financial information) may have to be disclosed in response to a FOIA request. The regulations at 45 CFR 5.65 provide that submitters of records may designate in writing that all or part of the information contained in such records is exempt from disclosure under exemption 4 at the time they submit such records or within a reasonable time thereafter. Under the Department's FOIA regulations, requestors have an opportunity to respond and, if desired, file a court action to prevent disclosure of exempt records. Requesting parties must specifically identify in their requests for advisory opinions any information they reasonably believe is exempt from disclosure under exemption 4.

These advisory opinion regulations have been amended to incorporate more clearly the requirement for designating trade secrets and confidential commercial or financial information with specificity. Information should be designated in the manner described in 45 CFR 5.65(c) and (d). Parties are encouraged to refrain from designating more information than arguably may be classified as trade secrets or confidential commercial or financial information. Wholesale designations of entire request letters are counterproductive and may make it more difficult for legitimately exempt information to be protected under FOIA. The requestor's assertions about the nature of the information it has submitted are not controlling. Consistent with the OIG's law enforcement responsibilities, we reserve the right to make disclosures other than in response to FOIA requests where the public interest requires, to the extent authorized by law. Unauthorized releases of confidential information would be a criminal violation of 18 U.S.C. 1905 (the Trade Secrets Act).

In addition, although a document may be exempt from disclosure under FOIA, facts reflected in that document may become part of the advisory opinion that the OIG will provide to the public. We will describe the material facts of the arrangement in question in the body of each advisory opinion, which will be made available to the public. To the extent that it may be necessary to reveal specific facts that could be regarded as confidential information, we believe we have the authority to do so under sections 1106(a) and 1128D(b) of the Act. Nevertheless, we do not intend to incorporate any such facts into the body of an advisory opinion unless we believe incorporating such information is necessary in order to render an informed opinion. Moreover, where we intend to incorporate into an advisory opinion information designated by the requesting party as confidential proprietary information, we will endeavor to provide the requesting party with reasonable notice and a reasonable opportunity to respond or withdraw its request.

Section 1008.53, Affected Parties

Comment: One commenter suggested that all parties should be required to consent to a request for an advisory opinion and that the requestor should be required to certify that such consent has been obtained.

Response: The crux of this comment appears to center around a concern that one party to an arrangement may submit information to the OIG without the knowledge or consent of another party who may not want such information disclosed. We believe that this is a matter best handled and resolved between the parties. In addition, for reasons set forth above, we believe that it may be impractical, if not impossible, to obtain consent from all potential parties to certain types of arrangements.

Section 1008.55, Admissibility of Evidence

Comment: While several commenters commended the OIG for prohibiting adverse inferences to be drawn from a party's failure to obtain an advisory opinion, other commenters suggested that we delete or clarify § 1008.55(b), which they found confusing with regard to the prohibition on the use of advisory opinions by third parties. One commenter objected to paragraph (b) of this section because an advisory opinion may be probative evidence as to why someone structured an arrangement in a particular way. The commenter questioned whether the OIG has the power to create evidentiary rules that would be binding on courts or administrative law judges.

Response: We agree that § 1008.55(b) was confusing as originally written. Consistent with our original intent to preclude legal reliance by non-requestors, this section is being revised to read as follows: ''An advisory opinion may not be introduced into evidence by a person or entity that was not the requester of the advisory opinion to prove that the person or entity did not violate the provisions of sections 1128, 1128A, or 1128B of the Act or any other law.'' The Department has the authority to create procedural rules applicable in its tribunals (42 CFR 1005, for example). With respect to other tribunals, the OIG believes it is proper to limit the use of documents created by the OIG for a specific purpose. Consistent with HIPAACs statutory directive that advisory opinions bind *only* requesting parties and the Department, it is our intention to preclude legal reliance by non-requestors; it follows necessarily that an advisory opinion may not be introduced into evidence by such non-requestors in any tribunal.

Section 1008.59, Range of Advisory Opinion

Comment: One commenter stated that advisory opinions should be binding on DoJ as well. The commenter believed that it would be unfair if DoJ, which must be consulted during the advisory opinion process, could still instigate enforcement proceedings against a requestor that has a favorable advisory opinion from the Department.

Response: Section 205 of HIPAA requires only that advisory opinions be binding on this Department. The Department lacks the authority to bind DoJ through the Department's rulemaking.

III. Additional Technical Changes

- In § 1008.5(b)(1), the phrase ''what the'' is being changed to ''whether'' to

correct a technical error, and the word ''and'' is being changed to ''or'' to be consistent with the statutory directive and our intent that we will not opine on questions of fair market value or bona fide employee status.

- In § 1008.31(c), the phrase ''to be'' in the first sentence is being deleted to be consistent with the intent of the regulation that the OIG will calculate the actual costs incurred by the Department in responding to an advisory opinion request.
- The phrase ''from the time the OIG notifies the requestor'' is being added in § 1008.31(d)(4) to be consistent with our original intention that the time period in question commences upon the OIG's notice.
- In § 1008.37, the phrase ''will'' in the first sentence is being replaced by ''must'' to be consistent with the mandatory nature of the requirement, and the phrase ''or entity'' is being inserted to be consistent with the usage of the same term at the beginning of the sentence.
- In § 1008.38(c), the phrase ''will'' is being replaced by ''must'' to be consistent with the mandatory nature of the requirement.
- In § 1008.43(a), the word ''when'' is being replaced by ''and'' to clarify, consistent with our original intent and practice, that an advisory opinion is issued when payment is received and the opinion is dated, numbered, and signed.
- In § 1008.43(b) is being revised to provide internal consistency within the section and to be consistent with our intent that advisory opinions will be based on the information provided by requestors.
- The word ''next'' appearing in § 1008.43(c)(2) has been repositioned to correct a technical error. In § 1008.47(c), the word ''in'' is being replaced by the word ''by'' to correct a technical error.
- Section 1008.59 has been revised to reflect more clearly our intent that the OIG will not provide legal opinions on questions or issues regarding authorities vested in other Federal, State, or local government agencies.

IV. Regulatory Impact Analysis

Executive Order 12866

The Office of Management and Budget (OMB) has reviewed this final rule in accordance with the provisions of Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rulemaking is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, safety, distributive, and equity effects).

As indicated in our preamble discussions, this rule addresses procedural issues involved in processing requests for advisory opinions submitted to the OIG. It sets up the procedures, as required by Public Law 104–191, for obtaining an advisory opinion on whether or not certain activities violate designated fraud and abuse authorities. This rule does not address the substance of the anti-kickback or other sanction statutes. Nor does it address the substance or content of advisory opinions which may be issued in the future. To the extent that advisory opinions affect the behavior of health care providers, that effect is the product of the substantive content of the sanction statutes themselves and the substantive content of the advisory opinions which will be issued on a case-by-case basis in the future. The effect of advisory opinions on health care providers is not a function of the *process* for requesting an advisory opinion.

In addition, the extent to which advisory opinions will result in alteration of future business practices, if any, is impossible to analyze without experience. It would be completely speculative to try to divine to what degree business deals may or may not occur as a result of the substance of advisory opinions issued in the future.

Moreover, we have no way of knowing in advance what the volume of requests for advisory opinions will be. However, we estimate that we will receive approximately 100 requests per year that will generally require between 3 and 60 hours each to process. Accordingly, it would likely cost in the range of $30,000 to $600,000 per year to issue advisory opinions.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), if a rule has a significant economic effect on a substantial number of small businesses the Secretary must specifically consider the effects of the rule on small business entities and analyze regulatory options that could lessen the impact of the rule. As stated above, this rule does not address the substance of the fraud and abuse statutes or the substance of advisory opinions which may be issued in the future. It describes the *process* by which an individual or entity may receive an opinion about the application of these statutes to particular business practices. The aggregate economic impact of this rulemaking on small business entities should, therefore, be minimal. There will, however, be costs involved in filing requests for opinions by OIG. Those costs will vary depending on the complexity of the request. Compared to the costs of seeking private legal advice, it would appear that fees charged for the OIG's review will not be substantial. Furthermore, the requirement that applicants pay cost-based fees for advisory opinions is not a product of this rulemaking; it is prescribed by statute. This rule merely lays out the procedures for such costs to be paid. Thus, we have concluded, and the Secretary certifies, that this final rule will not have a significant economic impact on a substantial number of small business entities, and that a regulatory flexibility analysis is not required for this rulemaking.

V. Paperwork Reduction Act

A. Introduction

In order to provide appropriate advisory opinions, the OIG has specified certain information from the parties who request advisory opinions. Under section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are required to solicit public comments and secure final approval from OMB on these information collection requirements. In the interim final regulations published on February 19, 1997, we indicated that §§ 1008.18, 1008.36(b) and 1008.37 through 1008.40, along with a listing of voluntary preliminary questions, specifically contained information collection requirements that required approval by OMB. As a result, the OIG published a Federal Register notice on March 21, 1997 (62 FR 13621) specifically requesting comments on these information collection activities. The information collection requirements set forth in the interim final rule were subsequently approved by OMB in September, 1997 under control number 0990–0213. OMB also approved a set of preliminary questions which provide guidance as toe what should be included in a request for an advisory opinion.

B. Discussion of Revised Information Collection Requirements

This final rulemaking is now easing or streamlining a number of these information collection activities in response to public comments received on the interim final regulations. Specifically, as indicated in this preamble, we are revising § 1008.36(b), with respect to the submission of a request, to permit parties to submit only those portions of documents relevant to the arrangement at issue, and describe in general terms those portions of the documents that have been withheld. In

addition, to avoid a blanket designation when a party seeks an advisory opinion, we have revised § 1008.36(b)(3) to indicate that requestors must give explicit designation of the specific sanction authorities about which an advisory opinion has been requested. Also in § 1008.36, we are eliminating the requirement that requesting parties submit their Medicare and Medicaid provider numbers. We are, however, adding a new paragraph (b)(8) to this section to require, in accordance with the Debt Collection Improvement Act of 1996, that requesting parties include their Taxpayer Identification Number when requesting an advisory opinion.

Further, new §§ 1008.36(b)(7) and 1008.39(e) are also being added to require requesting parties to notify the OIG if they apply to HCFA for an advisory opinion in accordance with 42 CFR part 411 on the same arrangement for which they are seeking an OIG advisory opinion. We believe that this change will better aid efforts to address and coordinate both the OIG and the HCFA advisory opinion processes.

Finally, we are revising or clarifying certain requirements in § 1008.38(c) concerning who may sign original (and additional) certifications submitted by requestors. Specifically, this revised section now clearly designates the appropriate signatory on behalf of requestors that are limited liability companies, and clarifies that each requesting party, and not its attorney, must provide the required certifications.

C. Proposed Information Collection Activities

The proposed information collection requirement described below will be submitted to the OMB for review and approval, as required by the Paperwork Reduction Act. In accordance with the Paperwork Reduction Act, we are soliciting public comment on the collection of the information in conjunction with section 205 of HIPAA that are contained in this revised final. Interested persons are invited to send comments regarding burden estimates or any aspect of the collection of information, including (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Type of information collection request: OIG Advisory Opinion Procedures in 42 CFR Part 1008. Section 205 of HIPAA, Public Law 104–191, requires the Department to provide advisory opinions to the public regarding several categories of subject matter, including the requestor's potential liability under sections 1128, 1128A and 1128B of the Social Security Act (the Act). The OIG published interim final regulations in the **Federal Register** on February 19, 1997 (62 FR 7350), setting forth the procedures under which members of the public may request advisory opinions from the OIG, and a **Federal Register** notice on March 21, 1997 (62 FR 13621) that contained a more thorough discussion of the information collection activities associated with the advisory opinion process. In order to aid potential requestors and the OIG in providing opinions under this process, a series of preliminary questions that may be answered in an advisory opinion request was developed by the OIG. These preliminary questions remain voluntary. The information collection requirements in the interim final rule and the preliminary questions were approved by OMB under control number 0990–0213.

The aggregate information burden for the information collection requirements contained in these revised final regulations is set forth below.

Respondents: The ''respondents'' for the collection of information described in the OIG rulemaking will be self-selected individuals and entities that choose to submit request for advisory opinions to the OIG. We anticipate that the respondents will include many types of health care providers, from sole practitioner physicians to large diversified publicly-traded corporations.

Estimated number of respondents: 500. Most individuals and entities that provide medical services that may be paid for by Medicare, Medicaid or Federal health care programs could potentially have questions regarding one of the subject matters about which the OIG will issue advisory opinions. In reality, we believe that the number of requestors will be a small fraction of such providers.

Over the past several years, the Office of the General Counsel, Inspector General Division has answered telephone inquires from individuals and entities seeking informal guidance with respect to the Medicare and State health care programs' anti-kickback statute and other sanction authorities. Many of the inquires related to authorities outside the scope of the advisory opinion process, such as the self-referral provisions of section 1877 of the Act. In addition, we believe that most of the inquiries received have been of a nature that the caller or requestor would be unlikely to request a formal written advisory opinion on the subject matter. Many inquiries related to rather simple and straight-forward matters that could have been researched by private counsel at relatively minor expense. Nevertheless, the rate of telephone inquiries form a starting point for estimating point for estimating the potential number of advisory opinion requests.

We estimate that the OIG received an average of six related telephone inquiries per day over the past several years. Using that history as a general guide and benchmark, we estimate an annual number of 500 respondents. Obviously, the actual number of requests could be larger since, for the first time, formal written opinions are available. Conversely, the number of inquiries could be less based on combination of several unquantifiable reasons, including the desire not to have one's arrangement be subject to scrutiny by the OIG (following issuance of the opinion) and the general public.

Estimated number of responses per respondent: One.

Estimated total annual (hour) burden on respondents: 5,000 hours. We believe that the burden of preparing requests for advisory opinions will vary widely depending upon the differences in the size of the entity making the request and the complexity of the advice sought. We estimate that the average burden for each submitted request for an advisory opinion will be in the range of 2 to 40 hours. We further believe that the burden for most request will be closer to the lower end of this range, with an average burden of approximately 10 hours per respondent.

The OIG is requiring requests for advisory opinions to involve actual or intended fact scenarios. We anticipate that most requests will involve business arrangements into which the requesting party intends to enter. Because the facts will relate to business plans, the requesting party will have collected and analyzed all, or almost all, of the information we will need to collect to review the request. Therefore, in order to request an advisory opinion, in many instances the requestor will simply have need to compile already collected information for our examination. In some cases, the requestor may need to expend a more significant amount of time and cost in preparing a submission related to more complex arrangements

that involve a large number of parties or participants.

Estimated annual cost burden on respondents (in addition to the hour burden): $1,000,000. In addition to the hour burden on respondents discussed above, some respondents may incur additional information collection costs related to the purchase of outside professional services, such as attorneys or consultants. We believe that the cost burden related to such outside assistance will vary from zero to 40 hours per request, with an average of 10 hours. At the rate of $200 per hour, this total burden would amount to $1,000,000.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Interested persons are invited to submit comments regarding this collection of information. Comments on this information collection should refer to the document identifier code OIG–10–F, and should be sent both to: Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201, FAX: (202) 690–6352; and Allison Herron Eydt, OIG Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, 725 17th Street, N.W., Washington, D.C. 20053, *FAX:* (202) 395–6974.

To request more information on the project or to obtain a copy of the information collection plans, please contact the OS Reports Clearance Officer, (202) 690–6207. Written comments should be received by [60 days from date of publication in the Federal Register], but in order to expedite full consideration of any concerns we recommend that comments be submitted as soon as possible within the first 30 days. After due consideration of all timely-filed public comments on these revised information collection activities, we will re-submit these sections to OMB for their approval under the Paperwork Reduction Act. These sections will not become effective until cleared by OMB. In the interim, requestors should rely on the preliminary questions issued by the OIG on which OMB has already granted approval.

List of Subjects in 42 CFR Part 1008

Administrative practice and procedures, Fraud, Grant programs—health, Health facilities, Health professions, Medicaid, Medicare, Penalties.

Accordingly, the interim final rule adding 42 CFR part 1008, which was published at 62 FR 7350 on February 19, 1997, is adopted as a final rule with the following changes:

PART 1008—[AMENDED]

1. The authority citation for part 1008 continues to read as follows:

Authority: 42 U.S.C. 1320a–7d(b).

2. Section 1008.1 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1008.1 Basis and purpose.

(a) This part contains the specific procedures for the submission of requests by an individual or entity for advisory opinions to, and the issuance of advisory opinions by, the OIG, in consultation with the Department of Justice (DoJ), in accordance with section 1128D(b) of the Social Security Act (Act), 42 U.S.C. 1320a–7d(b). The OIG will issue such advisory opinions based on actual or proposed factual circumstances submitted by the requesting individual or entity, or by counsel on behalf of the requesting individual or entity, provided all other requirements of this part are satisfied (including the requirement that the requesting individual or entity provide the certifications required in accordance with § 1008.38 of this part).

(b) An individual or entity may request an advisory opinion from the OIG regarding any of five specific subject matters described in § 1008.5 of this part.

* * * * *

3. Section 1008.5 is amended by republishing introductory paragraph (b) and by revising paragraph (b)(1) to read as follows:

§ 1008.5 Matters subject to advisory opinions.

* * * * *

(b) *Exceptions.* The OIG will not address through the advisory opinion process—

(1) What the fair market value will be, or whether fair market value was paid or received, for any goods, services or property; or

* * * * *

4. Section 1008.15 is amended by revising introductory paragraph (c) and paragraph (c)(3) to read as follows:

§ 1008.15 Facts subject to advisory opinions.

* * * * *

(c) Advisory opinion request will not be accepted, and/or opinions will not be issued when—

* * * * *

(3) An informed opinion cannot be made, or could be made only after extensive investigation, clinical study, testing, or collateral inquiry.

5. Section 1008.18 is amended by revising paragraph (b) to read as follows:

§ 1008.18 Preliminary questions suggested for the requesting party.

* * * * *

(b) Questions the OIG suggests that the requestor address may be obtained from the OIG. Requests should be made in writing, specify the subject matter, and be sent to the headquarter offices of the OIG.

* * * * *

6. Section 1008.31 is amended by revising paragraphs (c), (d)(1), (d)(2), (d)(3), and (e)(2); by redesignating paragraphs (d)(2) through (d)(5) as paragraphs (d)(3) through (d)(6) respectively; and by adding a new paragraph (d)(2) to read as follows:

§ 1008.31 OIG fees for the cost of advisory opinions.

* * * * *

(c) *Calculation of costs:* Prior to the issuance of the advisory opinion, the OIG will calculate the costs incurred by the Department in responding to the request. The calculation will include the costs of salaries and benefits payable to attorneys and others who have worked on the request in question, as well as administrative and supervisory support for such person. The OIG has the exclusive authority to determine the cost of responding to a request for an advisory opinion and such determination is not reviewable or waiveable.

(d) *Agreement to pay all costs.* (1) By submitting the request for an advisory opinion, the requestor agrees, except as indicated in paragraph (d)(4) of this section, to pay all costs incurred by the OIG in responding to the request for an advisory opinion.

(2) In its request for an advisory opinion, the requestor may request a written estimate of the cost involved in processing the advisory opinion. Within 10 business days of receipt of the request, the OIG will notify in writing of such estimate. Such estimate will not be binding on the Department, and the actual cost to be paid may be higher or lower than estimated. The time period for issuing the advisory opinion will be tolled from the time the OIG notifies the requestor of the estimate until the OIG receives written confirmation from the requestor that the requestor wants the OIG to continue processing the request. Such notice may include a new or revised triggering dollar amount, as set forth in paragraph (d)(3) of this section.

(3) In its request for an advisory opinion, the requestor may designate a

triggering dollar amount. If the OIG estimates that the costs of processing the advisory opinion request have reached, or are likely to exceed, the designated triggering dollar amount, the OIG will notify the requestor. The requestor may revise its designated triggering dollar amount in writing in its response to notification of a cost estimate in accordance with paragraph (d)(2) of this section.

* * * * *

(e) *Fees for outside experts.* * * *

(2) If the OIG determines that it is necessary to obtain expert advice to issue a requested advisory opinion, the OIG will notify the requestor of that fact and provide the identity of the appropriate expert and an estimate of the costs of the expert advice.

7. Section 1008.33 is amended by revising paragraphs (b) and (c) to read as follows:

§ 1008.33 Expert opinions from outside sources.

* * * * *

(b) The time period for issuing an advisory opinion will be tolled from the time that the OIG notifies the requestor of the need for an outside expert opinion until the time the OIG receives the necessary expert opinion.

(c) Once payment is made for the cost of the expert opinion, as set forth in § 1008.31(e) of this part, either directly to the expert or otherwise, the OIG will arrange for a prompt expert review of the issue or issues in question. Regardless of the manner of payment, the expert's work and opinion will be subject to the sole direction of the OIG.

8. Section 1008.36 is amended by republishing introductory paragraph (b); by revising paragraphs (b)(1), (b)(3), and (b)(4); by deleting existing paragraph (b)(5); by redesignating (b)(6) and (b)(7) as (b)(5) and (b)(6) respectively and revising them; and by adding new paragraphs (b)(7) and (b)(8) to read as follows:

§ 1008.36 Submission of a request.

* * * * *

(b) Each request for an advisory opinion must include—

(1) To the extent known to the requestor, the identities, including the names and addresses, of the requestor and of all other actual and potential parties to the arrangement, that are the subject of the request for an advisory opinion;

* * * * *

(3) A declaration of the subject category or categories as described in § 1008.5 of this part for which the advisory opinion is requested. To the extent an individual or entity requests an advisory opinion in accordance with §§ 1008.5(a)(3) or (a)(5) of this part, the requesting individual or entity should identify the specific subsections of sections 1128, 1128A or 1128B of the Act or the specific provision of § 1001.952 of this chapter about which an advisory opinion is sought:

(4) A complete and specific description of all relevant information bearing on the arrangement for which an advisory opinion is requested and on the circumstances of the conduct,[1] including—

(i) Background information,

(ii) For existing arrangements, complete copies of all operative documents,

(iii) For proposed arrangements, complete copies of all operative documents, if possible, and otherwise descriptions of proposed terms, drafts, or models of documents sufficient to permit the OIG to render an informed opinion,

(iv) Detailed statements of all collateral or oral understandings, if any, and

(v) If applicable, a designation of trade secrets or confidential commercial or financial information in the manner described in 45 CFR 5.65;

(5) Signed certifications by the requestor(s), as described in § 1008.37 of this part;

(6) A check or money order payable to the Treasury of the United States in the amount of $250, as discussed in § 1008.31(b) of this part;

(7) A declaration regarding whether an advisory opinion in accordance with part 411 of this title has been or will be requested from HCFA about the arrangement that is the subject of the advisory opinion request; and

(8) Each requesting party's Taxpayer Identification Number. (Approved by the Office of Management and Budget under control number 0990–0213)

9. Section 1008.37 is revised to read as follows:

§ 1008.37 Disclosure of ownership and related information.

Each individual or entity requesting an advisory opinion must supply full and complete information as to the identity of each entity owned or controlled by the individual or entity, and of each person with an ownership or control interest in the entity, as defined in section 1124(a)(1) of the Social Security Act (42 U.S.C. 1302a–3(a)(1)) and part 420 of this chapter. (Approved by the Office of Management and Budget under control #0990–0213)

10. Section 1008.38 is amended by revising paragraphs (a) and (b), introductory paragraph (c), paragraphs (c)(2) and (c)(3); and by adding a new paragraph (c)(4) to read as follows:

§ 1008.38 Signed certifications by the requestor.

(a) Every request must include the following signed certification from all requestors: ''With knowledge of the penalties for false statements provided by 18 U.S.C. 1001 and with knowledge that this request for an advisory opinion is being submitted to the Department of Health and Human Services, I certify that all of the information provided is true and correct, and constitutes a complete description of the facts regarding which an advisory opinion is sought, to the best of my knowledge and belief.''

(b) If the advisory opinion relates to a proposed arrangement, the request must also include the following signed certification from all requestors: ''The arrangement described in this request for an advisory opinion is one that [the requestor(s)] in good faith plan(s) to undertake.'' This statement may be made contingent on a favorable OIG advisory opinion, in which case, the phrase ''if the OIG issues a favorable advisory opinion'' should be added to the certification.

(c) The certification(s) must be signed by—

* * * * *

(2) The chief executive officer, or comparable officer, of the requestor, if the requestor is a corporation;

(3) The managing partner of the requestor, if the requestor is a partnership; or

(4) The managing member, or comparable person, if the requestor is a limited liability company.

11. Section 1008.39 is amended by revising paragraph (c) and by adding new paragraphs (e) and (f) to read as follows:

§ 1008.38 Additional information.

* * * * *

(c) Additional information should be provided in writing and certified to be a true, correct and complete disclosure of the requested information in a manner equivalent to that described in § 1008.38 of this part.

* * * * *

(e) Requesting parties are required to notify the OIG if they request an advisory opinion in accordance with part 411 of this title from HCFA about the arrangement that is the subject of their advisory opinion request.

[1] The requestor is under an affirmative obligation to make full and true disclosure with respect to the facts regarding the advisory opinion being requested.

(f) Where appropriate, after receipt of an advisory opinion request, the OIG may consult with the requesting parties to the extent the OIG deems necessary.

12. Section 1008.41 is amended by revising paragraph (a); and by republishing introductory paragraph (b) and revising paragraph (b)(3) to read as follows:

§ 1008.41 OIG acceptance of the request.

(a) Upon receipt of a request for an advisory opinion, the OIG will promptly make an initial determination whether the submission includes all of the information the OIG will require to process the request.

(b) Within 10 working days of receipt of the request, the OIG will—

* * * * *

(3) Formally decline to accept the request.

* * * * *

13. Section 1008.43 is amended by revising paragraphs (a), (b) and (c)(2); and by republishing introductory paragraph (c)(3) and revising paragraph (c)(3)(i) to read as follows:

§ 1008.43 Issuance of a formal advisory opinion.

(a) An advisory opinion will be considered issued once payment is received and it is dated, numbered, and signed by an authorized official of the OIG.

(b) An advisory opinion will contain a description of the material facts provided to the OIG with regard to the arrangement for which an advisory opinion has been requested. The advisory opinion will state the OIG's opinion regarding the subject matter of the request based on the facts provided to the OIG. If necessary, to fully describe the arrangement, the OIG is authorized to include in the advisory opinion the material facts of the arrangement, notwithstanding that some of these facts could be considered confidential information or trade secrets within the meaning of 18 U.S.C. 1905.

(c) * * * * *

(2) If the 60th day falls on a Saturday, Sunday, or Federal holiday, the time period will end at the close of the next business day following the weekend or holiday;

(3) The 60 day period will be tolled from the time the OIG—

(i) Notifies the requestor that the costs have reached, or are likely to exceed, the triggering amount until the time when the OIG receives written notice from the requestor to continue processing the request;

* * * * *

14. Section 1008.45 is revised to read as follows:

§ 1008.45 Rescission, termination or modification.

(a) Any advisory opinion given by the OIG is without prejudice to the right of the OIG to reconsider the questions involved and, where the public interest requires, to rescind, terminate or modify the advisory opinion. Requestors will be given a preliminary notice of the OIG's intent to rescind, terminate or modify the opinion, and will be provided a reasonable opportunity to respond. A final notice of rescission, termination or modification will be given to the requestor so that the individual or entity may discontinue or modify, as the case may be, the course of action taken in accordance with the OIG advisory opinion.

(b) For purposes of this part—

(1) To *rescind* an advisory opinion means that the advisory opinion is revoked retroactively to the original date of issuance with the result that the advisory opinion will be deemed to have been without force and effect from the original date of issuance. Recission may occur only where relevant and material facts were not fully, completely and accurately disclosed to the OIG.

(2) To *terminate* an advisory opinion means that the advisory opinion is revoked as of the termination date and is no longer in force and effect after the termination date. The OIG will not proceed against the requestor under this part if such action was promptly, diligently, and in good faith discontinued in accordance with reasonable time frames established by the OIG after consultation with the requestor.

(3) To *modify* an advisory opinion means that the advisory opinion is amended, altered, or limited, and that the advisory opinion continues in full force and effect in modified form thereafter. The OIG will not proceed against the requestor under this part if such action was promptly, diligently, and in good faith modified in accordance with reasonable time frames established by the OIG after consultation with the requestor.

15. Section 1008.47 is amended by revising paragraphs (c) and (d) to read as follows:

§ 1008.47 Disclosure.

* * * * *

(c) Any pre-decisional document, or part of such pre-decisional document, that is prepared by the OIG, DoJ, or any other Department or agency of the United States in connection with an advisory opinion request under the procedures set forth in this part generally will be exempt from disclosure under 5 U.S.C. 552, and will not be made publicly available.

(d) Documents submitted by the requestor to the OIG in connection with a request for an advisory opinion may be available to the public in accordance with 5 U.S.C. 552 through procedures set forth in 45 CFR part 5.

* * * * *

16. Section 1008.55 is amended by revising paragraph (b) to read as follows:

§ 1008.55 Admissibility of evidence.

* * * * *

(b) An advisory opinion may not be introduced into evidence by a person or entity that was not the requestor of the advisory opinion to prove that the person or entity did not violate the provisions of sections 1128, 1128A or 1128B of the Act or any other law.

17. Section 1008.59 is amended by revising paragraph (a) to read as follows:

§ 1008.59 Range of the advisory opinion.

(a) An advisory opinion will state only the OIG's opinion regarding the subject matter of the request. If the arrangement for which an advisory opinion is requested is subject to approval or regulation by any other Federal, State or local government agency, such advisory opinion may not be taken to indicate the OIG's views on the legal or factual issues that may be raised before that agency. The OIG will not provide any legal opinion on questions or issues regarding an authority which is vested in other Federal, State or local government agencies.

* * * * *

Dated: February 6, 1998.

June Gibbs Brown,

Inspector General, Department of Health and Human Services.

Approved: March 24, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 98–18874 Filed 7–15–98; 8:45 am]

BILLING CODE 4150–04–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7248]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the

base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director for Mitigation reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Arizona:					
Maricopa	Unincorporated Areas.	May 14, 1998, May 21, 1998, *Arizona Republic.*	The Honorable Janice K. Brewer, Chairman, Maricopa County Board of Supervisors, 301 Jefferson Street, Phoenix, Arizona 85003.	April 16, 1998	040037
Maricopa	City of Phoenix	May 14, 1998, May 21, 1998, *Arizona Republic.*	The Honorable Skip Rimsza, Mayor, City of Phoenix, 200 West Washington Street, 11th Floor, Phoenix, Arizona 85003–1611.	April 16, 1998	040051
Maricopa	City of Phoenix	May 12, 1998, May 19, 1998, *Arizona Republic.*	The Honorable Skip Rimsza, Mayor, City of Phoenix, 200 West Washington Street, 11th Floor, Phoenix, Arizona 85003–1611.	April 7, 1998	040051
Pima	City of Tucson	May 21, 1998, May 28, 1998, *Arizona Daily Star.*	The Honorable George Miller, Mayor, City of Tucson, P.O. Box 27210, Tucson, Arizona 85726.	April 17, 1998	040076
California:					

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Los Angeles	City of Montebello	May 21, 1998, May 28, 1998, *Montebello Messenger*.	The Honorable Art Payan, Mayor, City of Montebello, 1600 West Beverly Boulevard, Montebello, California 90640.	April 21, 1998	060141
Shasta	City of Redding	May 22, 1998, May 29, 1998, *Record Searchlight*.	The Honorable Ken Murray, Mayor, City of Redding, 760 Parkview Avenue, Redding, California 96001.	August 27, 1998	060360
San Diego	Unincorporated Areas.	May 8, 1998, May 15, 1998, *Vista Press*.	The Honorable Greg Cox, Chairperson, San Diego County Board of Supervisors, 1600 Pacific Highway, Room 335, San Diego, California 92101.	August 13, 1998	060284
Santa Barbara	Unincorporated Areas.	May 19, 1998, May 26, 1998, *Santa Barbara News Press*.	The Honorable Gail Marshall, Chairperson, Santa Barbara County Board of Supervisors, 105 East Anapamu Street, Santa Barbara, California 93101.	August 24, 1998	060331
Sonoma	Unincorporated Areas.	April 30, 1998, May 7, 1998, *Sonoma County Independent*.	The Honorable Paul Kelley, Chairman, Sonoma County Board of Supervisors, 575 Administration Drive, Room 100A, Santa Rosa, California 95403.	March 31, 1998	060375
Solano	City of Vallejo	May 6, 1998, May 13, 1998, *Vallejo Times Herald*.	The Honorable Gloria Exline, Mayor, City of Vallejo, P.O. Box 3068, Vallejo, California 94590.	April 1, 1998	060374
San Diego	City of Vista	May 8, 1998, May 15, 1998, *Vista Press*.	The Honorable Gloria McClellan, Mayor, City of Vista, P.O. Box 1988, Vista, California 92085.	August 13, 1998	060297
Sonoma	Town of Windsor	April 29, 1998, May 6, 1998, *The Times*.	The Honorable Sam Salmon, Mayor, Town of Windsor, P.O. Box 100, Windsor, California 95492.	March 31, 1998	060761
Colorado:					
Jefferson and Adams.	City of Arvada	May 7, 1998, May 14, 1998, *Arvada Jefferson Sentinel*.	The Honorable Robert Frie, Mayor, City of Arvada, City Hall, 8101 Ralston Road, Arvada, Colorado 80002.	August 12, 1998	085072
Douglas	Unincorporated Areas.	May 21, 1998, May 28, 1998, *The Denver Post*.	The Honorable M. Michael Cooke, Chairman, Douglas County Board of Commissioners, 101 Third Street, Castle Rock, Colorado 80104.	May 4, 1998	080049
Douglas	Town of Parker	May 21, 1998, May 28, 1998, *The Denver Post*.	The Honorable Gary Lanter, Mayor, Town of Parker, 20120 East Main Street, Parker, Colorado 80138.	May 4, 1998	080310
Louisiana:					
St. Landry Parish.	Town of Krotz Springs.	May 5, 1998, May 12, 1998, *The Daily World*.	The Honorable Gary Soileau, Mayor, Town of Krotz Springs, P.O. Box 218, Krotz Springs, Louisiana 70750.	April 22, 1998	220170
Nevada:					
Clark	City of Las Vegas	May 1, 1998, May 8, 1998, *Las Vegas Review Journal*.	The Honorable Jan Laverty Jones, Mayor, City of Las Vegas, 400 East Stewart Avenue, Las Vegas, Nevada 89101.	March 31, 1998	325276
New Mexico:					
Bernalillo	City of Albuquerque.	May 21, 1998, May 28, 1998, *Albuquerque Journal*.	The Honorable Jim Baca, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103–1293.	April 24, 1998	350002
Bernalillo	City of Albuquerque.	May 22, 1998, May 29, 1998, *Albuquerque Journal*.	The Honorable Jim Baca, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103–1293.	April 24, 1998	350002
Oklahoma:					
Tulsa	City of Tulsa	April 29, 1998, May 6, 1998, *Tulsa World*.	The Honorable M. Susan Savage, Mayor, City of Tulsa, City Hall 200 Civic Center, Tulsa, Oklahoma 74103.	April 7, 1998	405381
Texas:					
Collin	City of Allen	April 22, 1998, April 29, 1998, *The Allen American*.	The Honorable Steve Terrell, Mayor, City of Allen, One Butler Circle, Allen, Texas 75013.	March 30, 1998	480131

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Archer	Unincorporated Areas.	April 29, 1998, May 6, 1998, *Wichita Falls Times Record News*.	The Honorable Paul Wylie, Archer County Judge, P.O. Box 458, Archer City, Texas 76351.	April 16, 1998	481078
Brazos	City of Bryan	May 20, 1998, May 27, 1998, *Bryan-College Station Eagle*.	The Honorable Lonnie Stabler, Mayor, City of Bryan, P.O. Box 1000, Bryan, Texas 77805.	May 4, 1998	480082
Collin	Unincorporated Areas.	May 15, 1998, May 22, 1998, *Frisco Enterprise*.	The Honorable Ron Harris, Collin County Judge, 210 South McDonald Street, McKinney, Texas 75069.	April 7, 1998	480130
Collin	Unincorporated Areas.	April 29, 1998, May 6, 1998, *Plano Star Courier*.	The Honorable Ron Harris, Collin County Judge, Commissioners Court, Collin County Courthouse, McKinney, Texas 75069.	March 31, 1998	480130
Denton	City of Corinth	May 20, 1998, May 27, 1998, *Lake Cities Sun*.	The Honorable Shirley Spellerberg, Mayor, City of Corinth, 2003 South Corinth, Corinth, Texas 76205.	April 30, 1998	481143
Tarrant	City of Forest Hill	May 21, 1998, May 28, 1998, *Forest Hill News*.	The Honorable Bill Wilson, Mayor, City of Forest Hill, 6800 Forest Hill Drive, Forest Hill, Texas 76104.	April 20, 1998	480595
Fort Bend	Unincorporated Areas.	April 29, 1998, May 6, 1998, *Fort Bend Star*.	The Honorable Michael D. Rozell, Fort Bend County Judge, 301 Jackson Street, Suite 719, Richmond, Texas 77469.	April 1, 1998	480228
Collin	City of Frisco	May 22, 1998, May 29, 1998, *Frisco Enterprise*.	The Honorable Kathy Seei, Mayor, City of Frisco, P.O. Drawer 1100, Frisco, Texas 75034.	April 30, 1998	480134
Collin	City of Frisco	May 15, 1998, May 22, 1998, *Frisco Enterprise*.	The Honorable Kathy Seei, Mayor, City of Frisco, P.O. Drawer 1100, Frisco, Texas 75034.	April 7, 1998	480134
Harris	City of Houston	May 22, 1998, May 29, 1998, *Houston Chronicle*.	The Honorable Lee P. Brown, Mayor, City of Houston, 901 Bagby, Houston, Texas 77002.	August 27, 1998	480296
Dallas	City of Mesquite	April 28, 1998, May 5, 1998, *Dallas Morning News*.	The Honorable Mike Anderson, Mayor, City of Mesquite, P.O. Box 850137, Mesquite, Texas 75185–0137.	March 30, 1998	485490
Collin	City of Plano	April 29, 1998, May 6, 1998, *Plano Star Courier*.	The Honorable John Longstreet, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086–0358.	March 31, 1998	480140
Harris	City of South Houston.	May 22, 1998, May 29, 1998, *Houston Chronicle*.	The Honorable Cipirano Romero, Mayor, City of South Houston, 1018 Dallas Street, South Houston, Texas 77587.	August 27, 1998	480311
Fort Bend	City of Sugar Land.	April 29, 1998, May 6, 1998, *Fort Bend Star*.	The Honorable Dean Hrbacek, Mayor, City of Sugar Land, P.O. Box 110, Sugar Land, Texas 77487–0110.	April 1, 1998	480234
Wichita	Unincorporated Areas.	April 29, 1998, May 6, 1998, *Wichita Falls Times Record News*.	The Honorable Rick Gipson, Wichita County Judge, Wichita County Courthouse, Room 202, Wichita Falls, Texas 76301.	April 16, 1998	481189
Archer and Wichita.	City of Wichita Falls.	April 29, 1998, May 6, 1998, *Wichita Falls Times Record News*.	The Honorable Kay Yeager, Mayor, City of Wichita Falls, 1300 Seventh Street, Wichita Falls, Texas 76301.	April 16, 1998	480662

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: July 7, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–18969 Filed 7–15–98; 8:45 am]

BILLING CODE 6718–04–P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 532 and 552

[APD 2800.12A, CHGE 80]

RIN 3090–AG

General Services Administration Acquisition Regulation; 10 Day Payment Clause for Certain Federal Supply Service Contracts and Authorized Price Lists Under Federal Supply Service Schedule Contracts

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Interim rule adopted as final with changes.

SUMMARY: The General Services Administration is adopting as final, with a change, the interim rule published in the **Federal Register** at 63 FR 12965, March 16, 1998. This final rule amends the General Services Administration Acquisition Regulation (GSAR) to include Internet-based invoice processing, in addition to electronic data interchange (EDI) and electronic funds transfer (EFT), as an accepted electronic commerce (EC) transaction. This rule also amends the GSAR to allow contractors under the Federal Supply Service (FSS) multiple award schedule (MAS) program to print and distribute contract pricelists without prior written approval from the contracting officer.

DATES: Effective Date: July 16, 1998.

FOR FURTHER INFORMATION CONTACT: Gloria Sochon, GSA Acquisition Policy Division, (202) 208–6726.

SUPPLEMENTARY INFORMATION:

A. Background

The interim rule amended GSAR Part 532 and 552 to provide for payment of invoices in 10 days under Federal Supply Service (FSS) contracts in the Stock, Special Order, or Schedules Programs for contractors who agree to process orders and invoices electronically using implementation conventions provided by GSA. The rule defined full cycle EC and provided contract clauses establishing the conditions for 10 day payment of invoices.

No public comments were received in response to the interim GSAR rule. The interim GSAR rule is being converted to final with a change to add Internet-based invoice processing to the accepted EC transactions. This change will increase the base of contractors eligible to participate in full cycle EC.

In addition, GSA is removing the requirement that contractors under the FSS MAS program obtain written approval from the contracting officer prior to printing or distributing contract pricelists. This change will allow FSS MAS contractors to begin selling their products through their schedule contracts, and make the contracts available for Government agencies to use, as quickly as possible. In the past, FSS MAS contracts all started on a common date. FSS awarded many contracts in advance of the common start date, allowing time between award and the start date for the process of approving the pricelists. Many schedule contracts now have a variable contract period, effective on the date of award. The process of approving pricelists only delays the ability of contractors and customers to begin using the established contracts on that date. Other contractual remedies, including price adjustment or termination, sufficiently protect the Government's interest in the event that a contractor issues an incorrect pricelist. GSA expects this rule will have no significant cost or administrative burden on contractors or offerors. The rule simplifies administrative processes by removing the requirement to seek and obtain Government approval to print or distribute a contract pricelist. It also eliminates the costs involved in seeking and obtaining the approval.

B. Executive Order 12866

This regulatory action was not subject to Office of Management and Budget Review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

The GSA certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The rule provides that the Government will make payment in 10 days from receipt of a proper invoice when the contractor agrees to full cycle EC. Because not all contractors are EDI capable, full cycle EC is not mandatory. Contractors who do not agree to the terms will be paid under standard Prompt Payment Act (31 U.S.C. 3903) procedures and suffer no adverse consequences. Contractors who agree to full cycle EC will benefit from receiving payment more quickly and being able to streamline administrative procedures and costs associated with processing contract orders.

The change to allow contractors under the FSS MAS program to print and distribute contract pricelists without prior written approval from the contracting officer is not a significant revision requiring public comments and therefore the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the GSAR do not impose recordkeeping or information collection requirements, or otherwise collect information from offerors, contractors, or members of the public that require approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Parts 532 and 552

Government procurement.

Accordingly, the interim rule amending 48 CFR Parts 532 and 552 which was published at 63 FR 12965, March 16, 1998, is adopted as a final rule with the following changes:

1. The authority citation for 48 CFR Parts 532 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 532—CONTRACT FINANCING

2. Section 532.902 is amended by revising the introductory paragraph to read as follows:

532.902 Definitions.

''Full cycle electronic commerce'' means the use of electronic data interchange (EDI), Internet-based invoice processing, and electronic funds transfer (EFT):

* * * * *

3. Section 532.905 is amended by revising paragraph (c)(2) to read as follows:

532.905 Invoice payments.

* * * * *

(c) * * *

* * * * *

(2) The 10 day payment terms apply to each order that meet all the following conditions:

(i) FSS places the order using EDI in accordance with the Trading Partner Agreement.

(ii) The contractor submit EDI invoices in accordance with the Trading Partner Agreement or invoices through the GSA Finance Center Internet-based invoice process.

(iii) A GSA Finance Center pays the invoices using EFT.

* * * * *

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 552.232–25 is amended by revising the clause date and deviation citation and revising paragraph (a)(2)(ii) to read as follows:

552.232–25 Prompt payment.

* * * * *

PROMPT PAYMENT (JUL 1998)
(DEVIATION FAR 52.232–25)

* * * * *

(a) *Invoice payments.*

* * * * *

(2) * * *

* * * * *

(ii) The Contractor must generate and submit to the Government valid EDI invoices (transaction set 810) or submit invoices through the GSA Finance Center Internet-based invoice process. Internet-based invoices must be submitted using procedures provided by GSA.

* * * * *

5. Section 552.232–70 is amended by revising the clause date and paragraph (b)(2) to read as follows:

552.232–70 Invoice payments.

* * * * *

INVOICE PAYMENTS (JUL 1998)

* * * * *

(b) * * *

* * * * *

(2) The Contractor must generate and submit to the Government valid EDI invoices (transaction set 810) or submit invoices through the GSA Finance Center Internet-based invoice process. Internet-based invoices must be submitted using procedures provided by GSA.

* * * * *

6. Section 552.238–74 is amended by revising the clause data and paragraph (b) to read as follows:

552.238–74 Submission and distribution of authorized FSS schedule pricelists.

* * * * *

SUBMISSION AND DISTRIBUTION OF AUTHORIZED FSS SCHEDULE PRICELISTS (JUL 1998)

* * * * *

(b) The Contracting Officer will return one copy of the Authorized FSS Schedule Pricelist to the Contractor with the notification of contract award.

* * * * *

Dated: July 8, 1998.

Ida M. Ustad,

Deputy Associate Administrator for Acquisition Policy.

[FR Doc. 98–18816 Filed 7–15–98; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 7

[Docket No. OST–96–1430; Amdt. 1]

RIN 2105–AC69

Public Availability of Information; Electronic FOIA Amendment

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Department of Transportation revises its regulations implementing the Freedom of Information Act (FOIA), 5 U.S.C. 552. This amendment provides changes to conform to the requirements of the Electronic Freedom of Information Act Amendments of 1996 (EFOIA), Public Law 104–231, provides changes to DOT's fee schedule, and reflects certain organizational changes.

DATES: This rule takes effect on August 17, 1998.

FOR FURTHER INFORMATION CONTACT: Robert I. Ross, Office of the General Counsel, C–10, Department of Transportation, Washington, DC 20590, telephone (202) 366–9156, FAX (202) 366–9170; electronic mail bob.ross@ost.dot.gov.

SUPPLEMENTARY INFORMATION: These revisions reflect changes required by the Electronic Freedom of Information Act Amendments of l996 (Public Law 104–231). New provisions implementing the amendments are found at §§ 7.5 (frequently requested documents), 7.8 (electronic reading room requirements), 7.21 (deletion markings and volume estimation), 7.31 (timing of responses, multi-track and expedited processing), and 7.33 (unusual circumstances). Revisions to DOT's fee schedule can be found at § 7.43. DOT will be charging fees at rates based on an average of hourly rates for three pay scale levels. Finally, references to DOT's Urban Mass Transportation Administration (UMTA) are changed to the Federal Transit Administration (FTA) to reflect a statutory revision to the name of the agency. This amendment was published for public comment (63 FR 18855; April 16, 1998), but none was received. We are therefore issuing this amendment as proposed.

Regulatory Notices and Analysis

This amendment is not a ''significant regulatory action'' within the meaning of Executive Order 12866 or the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*). It is also not significant within the definition in DOT's Regulatory Policies and Procedures, 49 FR 11034 (1979), in part because it does not involve any change in important DOT policies. Because the economic impact should be minimal, further regulatory evaluation is not necessary. Under the Regulatory Flexibility Act, the group of persons who will be directly affected by this amendment are the public, who will find it easier to obtain information from the DOT under FOIA. Individual members of the public do not qualify as small entities, but small organizations, businesses, etc., do and all will have burdens lessened by this amendment, as its effect will be to make records available through electronic media and to streamline FOIA processing activities; however, it is not likely that any such burden reduction will be large nor that it will be convertible into economic equivalents. Hence, I certify that this amendment will not have a significant economic impact on a substantial number of small entities.

This amendment does not significantly affect the environment, and therefore an environmental impact statement is not required under the National Environmental Policy Act of 1969. It has also been reviewed under Executive Order 12612, Federalism, and it has been determined that it does not have sufficient implications for federalism to warrant preparation of a Federalism Assessment.

Finally, the amendment does not contain any collection of information requirements, requiring review under the Paperwork Reduction Act, as amended.

List of Subjects in 49 CFR Part 7:

Freedom of information.

In accordance with the above, DOT revises 49 CFR Part 7 to read as follows:

PART 7—PUBLIC AVAILABILITY OF INFORMATION

Subpart A—General Provisions

Sec.
7.1 General.
7.2 Definitions.

Subpart B—Information Required to be Made Public by DOT

7.3 Publication in the **Federal Register**.
7.4 Publication required.
7.5 Availability of opinions, orders, staff manuals, statements of policy, and interpretations and indices.
7.6 Deletion of identifying detail.
7.7 Access to materials and indices.
7.8 Copies.
7.9 Protection of records.
7.10 Public records.

Subpart C—Availability of Reasonably Described Records Under the Freedom of Information Act

7.11 Applicability.
7.12 Administration of subpart.
7.13 Records available.
7.14 Requests for records.
7.15 Contacts for records requested under the FOIA.
7.16 Requests for records of concern to more than one government organization.
7.17 Consultation with submitters of commercial and financial information.

Subpart D—Procedures for Appealing Decisions Not to Disclose Records and/or Waive Fees

7.21 General.

Subpart E—Time Limits

7.31 Initial determinations.
7.32 Final determinations.
7.33 Extension.

Subpart F—Fees

7.41 General.
7.42 Payment of fees.
7.43 Fee schedule.
7.44 Services performed without charge or at a reduced charge.
7.45 Transcripts.
7.46 Alternative sources of information.

Authority: 5 U.S.C. 552; 31 U.S.C. 9701; 49 U.S.C. 322; E.O. 12600, 3 CFR, 1987 Comp., p. 235.

Subpart A—General Provisions

§ 7.1 General.

(a) This part implements 5 U.S.C. 552, and prescribes rules governing the availability to the public of DOT records. Many documents are made available to the public for inspection and copying through DOT's Primary Electronic Access Facility and public record unit locations that are discussed in subpart B of this part, which contains the DOT regulations concerning the availability to the public of opinions issued in the adjudication of cases, policy issuances, administrative manuals, and other information made available to the public, without need for a specific request.

(b) Subpart C of this part describes the records that are not required to be disclosed on DOT's own action under this part, but that may be available upon request under FOIA.

(c) Indices are maintained to reflect all records subject to subpart B of this part, and are available for public inspection and copying as provided in subpart B.

§ 7.2 Definitions.

As used in this part—

Act and *FOIA* mean the Freedom of Information Act, 5 U.S.C. 552, as amended.

Administrator means the head of each DOT component of DOT and includes the Commandant of the Coast Guard, the Inspector General, and the Director of the Bureau of Transportation Statistics.

Concurrence means that the approval of the person being consulted is required in order for the subject action to be taken.

Consultation means that the approval of the person being consulted is not required in order for the subject action to be taken.

Department or *DOT* means the Department of Transportation, including the Office of the Secretary of Transportation, the Office of the Inspector General, and the following DOT components, all of which may be referred to as DOT components. Means of contacting each of these DOT components appear in § 7.15. This definition specially excludes the Surface Transportation Board, which has its own FOIA regulations (49 CFR Part 1001):

(1) United States Coast Guard,
(2) Federal Aviation Administration,
(3) Federal Highway Administration,
(4) Federal Railroad Administration,
(5) National Highway Traffic Safety Administration,
(6) Federal Transit Administration,
(7) Saint Lawrence Seaway Development Corporation,
(8) Maritime Administration,
(9) Research and Special Programs Administration, and
(10) Bureau of Transportation Statistics.

Primary Electronic Access Facility means the electronic docket facility in the DOT Headquarters Building, 400 7th Street, S.W., Washington, D.C. 20590.

Reading room records are those records required to be made available to the public under 5 U.S.C. 552(a)(2) as described in § 7.5 of Subpart B of this part. These records are made available through DOT's Primary Electronic Access Facility. Other records may also be made available at DOT's discretion at DOT inspection facilities, including DOT's Primary Electronic Access Facility.

Record includes any writing, drawing, map, recording, tape, film, photograph, or other documentary material by which information is preserved. The term also includes any such documentary material stored by computer.

Responsible DOT official means the head of the DOT component concerned, or the General Counsel or the Inspector General, as the case may be, or the designee of any of them, authorized to take an action under this part.

Secretary means the Secretary of Transportation or any person to whom the Secretary has delegated authority in the matter concerned.

Subpart B—Information Required To Be Made Public by DOT

§ 7.3 Publication in the Federal Register.

This section implements 5 U.S.C. 552(a)(1), and prescribes rules governing publication in the **Federal Register** of the following:

(a) Descriptions of DOT's organization, including its DOT components and the established places at which, the officers from whom, and the methods by which, the public may secure information and make submittals or obtain decisions;

(b) Statements of the general course and methods by which DOT's functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(c) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(d) Substantive rules of general applicability adopted as authorized by law and statements of general policy or interpretations of general applicability formulated and adopted by DOT; and

(e) Each amendment, revision, or repeal of any material listed in paragraphs (a) through (d) of this section.

§ 7.4 Publication required.

(a) *General.* The material described in § 7.3 will be published in the **Federal Register**. For the purposes of this paragraph, material that will reasonably be available to the class of persons affected by it will be considered to be published in the **Federal Register** if it has been incorporated by reference with the approval of the Director of the Federal Register.

(b) *Effect of nonpublication.* Except to the extent that he/she has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, any procedure or matter required to be published in the **Federal Register**, but not so published.

§ 7.5 Availability of opinions, orders, staff manuals, statements of policy, and interpretations and indices.

(a) This section implements 5 U.S.C. 552(a)(2). It prescribes the rules governing the availability for public inspection and copying of the following reading room materials:

(1) Any final opinion (including a concurring or dissenting opinion) or order made in the adjudication of a case.

(2) Any policy or interpretation that has been adopted under DOT authority,

including any policy or interpretation concerning a particular factual situation, if that policy or interpretation can reasonably be expected to have precedential value in any case involving a member of the public in a similar situation.

(3) Any administrative staff manual or instruction to staff that affects any member of the public, including the prescribing of any standard, procedure, or policy that, when implemented, requires or limits any action of any member of the public or prescribes the manner of performance of any activity by any member of the public. However, this does not include staff manuals or instructions to staff concerning internal operating rules, practices, guidelines, and procedures for DOT inspectors, investigators, law enforcement officers, examiners, auditors, and negotiators and other information developed predominantly for internal use, the release of which could significantly risk circumvention of agency regulations or statutes.

(4) Copies of all records, regardless of form or format, that have been released to any person under subpart C of this part and which, because of the nature of their subject matter, a DOT component determines have become or are likely to become the subject of subsequent requests for substantially the same records.

(5) A general index of the records listed in this paragraph.

(b) Any material listed in paragraph (a) of this section that is not made available for public inspection and copying, or that is not indexed as required by § 7.7, may not be cited, relied on, or used as precedent by DOT to affect any member of the public adversely unless the person to whose detriment it is relied on, used, or cited has had actual timely notice of the material.

(c) This section does not apply to material that is published in the **Federal Register** or covered by subpart C of this part.

§ 7.6 Deletion of identifying detail

Whenever it is determined to be necessary to prevent a clearly unwarranted invasion of personal privacy, identifying details will be deleted from any record covered by this subpart that is published or made available for inspection. Whenever it is determined to be necessary to prevent the disclosure of information required or authorized to be withheld by another Federal statute, such information shall be deleted from any record covered by this subpart that is published or made available for inspection. A full explanation of the justification for the deletion will accompany the record published or made available for inspection.

§ 7.7 Access to materials and indices.

(a) Except as provided in paragraph (b) of this section, material listed in § 7.5 will be made available for inspection and copying to any member of the public at DOT document inspection facilities. It has been determined that it is unnecessary and impracticable to publish the index of materials in the **Federal Register**. Information as to the kinds of materials available at each facility may be obtained from the facility or the headquarters of the DOT component of which it is a part.

(b) The material listed in § 7.5 that is published and offered for sale will be indexed, but is not required to be kept available for public inspection. Whenever practicable, however, it will be made available for public inspection at the appropriate DOT reading room.

(c) Each DOT component will also make the reading room records identified in section 7.5(a) that are created by DOT on or after November 1, 1996, available electronically. This includes indices of its reading room records as required by law after December 1, 1999.

§ 7.8 Copies

Copies of any material covered by this subpart that is not published and offered for sale may be ordered, upon payment of the appropriate fee, from the Docket Offices listed in § 7.10. Copies will be certified upon request and payment of the fee prescribed in § 7.43(f).

§ 7.9 Protection of records.

(a) Records made available for inspection and copying may not be removed, altered, destroyed, or mutilated.

(b) 18 U.S.C. 641 provides for criminal penalties for embezzlement or theft of government records.

(c) 18 U.S.C. 2071 provides for criminal penalties for the willful and unlawful concealment, mutilation or destruction of, or the attempt to conceal, mutilate, or destroy, government records.

§ 7.10 Public Records.

Publicly available records are located in DOT's Primary Electronic Access Facility at 400 7th Street, S.W., Washington, D.C. 20590.

(a) The Primary Electronic Access Facility maintains materials for the Office of the Secretary, including former Civil Aeronautics Board material, and materials for the DOT components. This facility is located at Plaza Level 401, and the hours of operation are 10:00–17:00.

(b) Certain DOT components also maintain public record units at regional offices and at the offices of the Commandant and District Commanders of the United States Coast Guard. These facilities are open to the public Monday through Friday except Federal holidays, during regular working hours. The Saint Lawrence Seaway Development Corporation has facilities at 180 Andrews Street, Massena, New York 13662–0520.

(c) Operating Administrations may have separate facilities for manual records. Additional information on the location and hours of operations for Docket Offices and inspection facilities can be obtained through DOT's Primary Electronic Access Facility, at (202) 366–9322.

Subpart C—Availability of Reasonably Described Records Under the Freedom of Information Act

§ 7.11 Applicability.

(a) This subpart implements 5 U.S.C 552(a)(3), and prescribes the regulations governing public inspection and copying of reasonably described records under FOIA.

(b) This subpart does not apply to:

(1) Records published in the **Federal Register**, opinions in the adjudication of cases, statements of policy and interpretations, and administrative staff manuals that have been published or made available under subpart B of this part.

(2) Records or information compiled for law enforcement purposes and covered by the disclosure exemption described in § 7.13(c)(7) if—

(i) The investigation or proceeding involves a possible violation of criminal law; and

(ii) There is reason to believe that—

(A) The subject of the investigation or proceeding is not aware of its pendency, and

(B) Disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings.

(3) Informant records maintained by a criminal law enforcement component of DOT under an informant's name or personal identifier, if requested by a third party according to the informant's name or personal identifier, unless the informant's status as an informant has been officially confirmed.

§ 7.12 Administration of subpart.

Authority to administer this subpart and to issue determinations with respect

to initial requests is delegated as follows:

(a) To the General Counsel for the records of the Office of the Secretary other than the Office of Inspector General.

(b) To the Inspector General for records of the Office of Inspector General.

(c) To the Administrator of each DOT component, who may redelegate to officers of that administration the authority to administer this part in connection with defined groups of records. However, each Administrator may redelegate the duties under subpart D of this part to consider appeals of initial denials of requests for records only to his or her deputy or to not more than one other officer who reports directly to the Administrator and who is located at the headquarters of that DOT component.

§ 7.13 Records available.

(a) *Policy.* It is DOT policy to make its records available to the public to the greatest extent possible, in keeping with the spirit of FOIA. This includes providing reasonably segregable information from documents that contain information that may be withheld.

(b) *Statutory disclosure requirement.* FOIA requires that DOT, on a request from a member of the public submitted in accordance with this subpart, make requested records available for inspection and copying.

(c) *Statutory exemptions.* Exempted from FOIA's statutory disclosure requirement are matters that are:

(1)(i) Specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense or foreign policy, and

(ii) In fact properly classified pursuant to such Executive order;

(2) Related solely to the internal personnel rules and practices of an agency;

(3) Specifically exempted from mandatory disclosure by statute (other than the Privacy Act or the Government in the Sunshine Act), provided that such statute—

(i) Requires that the matters be withheld from the public in such a manner as to leave not any discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Inter-agency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information—

(i) Could reasonably be expected to interfere with enforcement proceedings,

(ii) Would deprive a person of a right to a fair or an impartial adjudication,

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy,

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, Tribal, or foreign agency or authority or any private institution that furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source,

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(d) *Deleted information.* The amount of information deleted from frequently-requested electronic records that are available in a public reading room will be indicated on the released portion of the record, unless doing so would harm an interest protected by the exemption concerned. If technically feasible, the amount of information deleted will be indicated at the place in the record where the deletion is made.

§ 7.14 Requests for records.

(a) Each person desiring access to or a copy of a record covered by this subpart shall comply with the following provisions:

(1) A written request must be made for the record.

(2) Such request should indicate that it is being made under FOIA.

(3) The envelope in which a mailed request is sent should be prominently marked: ''FOIA.''

(4) The request should be addressed to the appropriate office as set forth in § 7.15.

(5) The request should state the format (*e.g.,* paper, microfiche, computer diskette, etc.) in which the information is sought, if the requestor has a preference.

(b) If the requirements of paragraph (a) of this section are not met, treatment of the request will be at the discretion of the agency. The twenty-day limit for responding to requests, described in § 7.31, will not start to run until the request has been identified, or would have been identified with the exercise of due diligence, by an employee of DOT as a request pursuant to FOIA and has been received by the office to which it should have been originally sent.

(c) *Form of requests.* (1) Each request should describe the particular record to the fullest extent possible. The request should describe the subject matter of the record, and, if known, indicate the date when it was made, the place where it was made, and the person or office that made it. If the description does not enable the office handling the request to identify or locate the record sought, that office will notify the requestor and, to the extent possible, indicate the additional data required.

(2) Each request shall—

(i) Specify the fee category (commercial use, news media, educational institution, noncommercial scientific institution, or other) in which the requestor claims the request to fall and the basis of this claim (see subpart F of this part for fees and fee waiver requirements),

(ii) State the maximum amount of fees that the requestor is willing to pay or include a request for a fee waiver, and

(iii) A request seeking a fee waiver shall, to the extent possible, address why the requestor believes that the criteria for fee waivers set out in § 7.44(f) are met.

(3) Requesters are advised that the time for responding to requests set forth in subpart E will not begin to run—

(i) If a requestor has not sufficiently identified the fee category applicable to the request,

(ii) If a requestor has not stated a willingness to pay fees as high as anticipated by DOT,

(iii) If a fee waiver request is denied and the requestor has not included an alternative statement of willingness to pay fees as high as anticipated by DOT, or

(iv) If a fee waiver request does not address fee waiver criteria.

(d) *Creation of records.* A request may seek only records that are in existence at the time the request is received. A request may not seek records that come into existence after the date on which it is received and may not require that new records be created in response to the request by, for example, combining or compiling selected items from manual files, preparing a new computer program, or calculating proportions, percentages, frequency distributions, trends, or comparisons. In those instances where DOT determines that creating a new record will be less burdensome than disclosing large volumes of unassembled material, DOT may, in its discretion, agree to creation of a new record as an alternative to disclosing existing records. Records will be provided in the form or format sought by the requestor if the record is readily reproducible in the requested format.

(e) *Search for records.* (1) Each record made available under this subpart will be made available for inspection and copying during regular business hours at the place where it is located, or photocopying may be arranged with the copied materials being mailed to the requestor upon payment of the appropriate fee. Original records ordinarily will be copied except in this instance where, in DOT's judgment, copying would endanger the quality of the original or raise the reasonable possibility of irreparable harm to the record. In these instances, copying of the original would not be in the public interest. In any event, original records will not be released from DOT custody. Original records, regardless of format, may be returned to agency service upon provision of a copy of the record to the requestor, or, in the case of a denial, upon creation and retention of a copy of the original for purposes of FOIA processing.

(2) DOT will make a reasonable effort to search for requested records in electronic form or format, unless doing so would significantly interfere with operation of the affected automated information system.

(f) If a requested record is known not to exist in the files of the agency, or to have been destroyed or otherwise disposed of, the requestor will be so notified.

(g) Fees will be determined in accordance with subpart F of this part.

(h) Notwithstanding paragraphs (a) through (g) of this section, informational material, such as news releases, pamphlets, and other materials of that nature that are ordinarily made available to the public as a part of any information program of the Government will be available upon oral or written request. A fee will be not be charged for individual copies of that material so long as the material is in supply. In addition DOT will continue to respond, without charge, to routine oral or written inquiries that do not involve the furnishing of records.

§ 7.15 Contacts for records requested under the FOIA.

Each person desiring a record under this subpart should submit a request in writing (via paper, facsimile, or electronic mail) to the DOT component where the records are located:

(a) FOIA Offices at 400 7th Street, S.W., Washington, DC 20590:

(1) Office of the Secretary of Transportation, Room 5432.

(2) Federal Highway Administration, Room 4428.

(3) National Highway Traffic Safety Administration, Room 5221.

(4) Federal Transit Administration, Room 9400.

(5) Maritime Administration, Room 7221.

(6) Research and Special Programs Administration, Room 8419.

(7) Bureau of Transportation Statistics, Room 3430.

(8) Office of Inspector General, Room 9210.

(b) Federal Aviation Administration, 800 Independence Avenue, S.W., Room 906A, Washington, DC 20591.

(c) United States Coast Guard, 2100 2nd Street, S.W., Room 6106, Washington, DC 20593–0001.

(d) Director, Office of Finance, Saint Lawrence Seaway Development Corporation, 180 Andrews Street, P.O. Box 520, Massena, New York 13662–0520.

(e) Federal Railroad Administration, 1120 Vermont Avenue NW, 7th Floor, Washington, DC. (Mailing address: 400 Seventh St., SW, Washington, DC 20590.)

(f) Certain DOT components also maintain FOIA contacts at regional offices and at the offices of the Commandant and District Commanders of the United States Coast Guard. Additional information on the location of these offices can be obtained through the FOIA contact offices listed in this section.

(g) If the person making the request does not know where in DOT the record is located, he or she may make an inquiry to the Chief, FOIA Division, Office of the General Counsel (voice: 202.366.4542; facsimile: 202.366.8536).

(h) Requests for records under this part, and Freedom of Information Act inquiries generally, may be made by accessing the DOT Home Page on the Internet (www.dot.gov) and clicking on the Freedom of Information Act link (www.dot.gov/foia).

§ 7.16 Requests for records of concern to more than one government organization.

(a) If the release of a record covered by this subpart would be of concern to both DOT and another Federal agency, the determination as to release will be made by DOT only after consultation with the other interested agency.

(b) If the release of the record covered by this subpart would be of concern to both DOT and a State, local, or Tribal government, a territory or possession of the United States, or a foreign government, the determination as to release will be made by DOT only after consultation with the interested government.

(c) Alternatively, DOT may refer the request (or relevant portion thereof) for decision by a Federal agency that originated or is substantially concerned with the records, but only if that agency is subject to FOIA. Such referrals will be made expeditiously and the requestor notified in writing that a referral has been made.

§ 7.17 Consultation with submitters of commercial and financial information.

(a) If a request is received for information that has been designated by the submitter as confidential commercial information, or which DOT has some other reason to believe may contain information of the type described in § 7.13(c)(4), the submitter of such information will, except as is provided in paragraphs (c) and (d) of this section, be notified expeditiously and asked to submit any written objections to release. At the same time, the requestor will be notified that notice and an opportunity to comment are being provided to the submitter. The submitter will, to the extent permitted by law, be afforded a reasonable period of time within which to provide a detailed statement of any such objections. The submitter's statement shall specify all grounds for withholding any of the information. The burden shall be on the submitter to identify all information for which exempt treatment is sought and to persuade the agency that the information should not be disclosed.

(b) The responsible DOT component will, to the extent permitted by law, consider carefully a submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose business information. Whenever a decision is

made to disclose such information over the objection of a submitter, the office responsible for the decision will forward to the submitter a written notice of intent to disclose that will, to the extent permitted by law, be forwarded to the submitter a reasonable number of days prior to the specified date upon which disclosure is intended. At the same time the submitter is notified, the requestor will be notified of the decision to disclose information. The written notice will include:

(1) A statement of the reasons for which the submitter's disclosure objections were not accepted;

(2) A description of the business information to be disclosed; and

(3) A specific disclosure date.

(c) The notice requirements of this section will not apply if:

(1) The office responsible for the decision determines that the information should not be disclosed;

(2) The information lawfully has been published or otherwise made available to the public; or

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552).

(d) The procedures established in this section will not apply in the case of:

(1) Business information submitted to the National Highway Traffic Safety Administration and addressed in 49 CFR Part 512.

(2) Information contained in a document to be filed or in oral testimony that is sought to be withheld pursuant to Rule 39 of the Rules of Practice in Aviation Economic Proceedings (14 CFR 302.39).

(e) Whenever a requestor brings suit seeking to compel disclosure of confidential commercial information, the responsible DOT component will promptly notify the submitter.

Subpart D—Procedures for Appealing Decisions Not to Disclose Records and/or Waive Fees

§ 7.21 General.

(a) Each officer or employee of DOT who, upon a request by a member of the public for a record under this part, makes a determination that the record is not to be disclosed, either because it is subject to an exemption or not in DOT's custody and control, will give a written statement of the reasons for that determination to the person making the request; and indicate the names and titles or positions of each person responsible for the initial determination not to comply with such request, and the availability of an appeal within DOT. The denial letter will include an estimate of the volume of records or information withheld, in number of pages or in some other reasonable form of estimation. This estimate does not need to be provided if the volume is otherwise indicated through deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption. Records disclosed in part will be marked or annotated to show both the amount and the location of the information deleted whenever practicable.

(b) When a request for a waiver of fees pursuant to § 7.44 has been denied in whole or in part, the requestor may appeal the denial.

(c) Any person to whom a record has not been made available within the time limits established by § 7.31 and any person who has been given a determination pursuant to paragraph (a) of this section that a record will not be disclosed may appeal to the responsible DOT official. Any person who has not received an initial determination on his or her request within the time limits established by § 7.31 can seek immediate judicial review, which may be sought without the need first to submit an administrative appeal. Judicial review may be sought in the United States District Court for the judicial district in which the requestor resides or has his or her principal place of business, the judicial district in which the records are located, or in the District of Columbia. A determination that a record will not be disclosed and/or that a request for a fee waiver or reduction will not be granted does not constitute final agency action for the purposes of judicial review unless:

(1) It was made by the responsible DOT official; or

(2) The applicable time limit has passed without a determination on the initial request or the appeal, as the case may be, having been made.

(d) Each appeal must be made in writing within thirty days from the date of receipt of the original denial and should include the DOT file or reference number assigned to the request and all information and arguments relied upon by the person making the request. (Appeals may be submitted via facsimile and conventional mail, but not via electronic mail.) Such letter should indicate that it is an appeal from a denial of a request made under FOIA. The envelope in which a mailed appeal is sent should be prominently marked: ''FOIA Appeal.'' If these requirements are not met, the twenty-day limit described in § 7.32 will not begin to run until the appeal has been identified, or would have been identified with the exercise of due diligence, by a DOT employee as an appeal under FOIA, and has been received by the appropriate office.

(e) Whenever the responsible DOT official determines it necessary, he/she may require the requestor to furnish additional information, or proof of factual allegations, and may order other proceedings appropriate in the circumstances; in any case in which a request or order is made, DOT's time for responding ceases to count while the requestor responds to the request or order. The decision of the responsible DOT official as to the availability of the record or the appropriateness of a fee waiver or reduction constitutes final agency action for the purpose of judicial review.

(f) The decision of the responsible DOT official not to disclose a record under this part or not to grant a request for a fee waiver or reduction is considered to be a denial by the Secretary for the purpose of 5 U.S.C. 552(a)(4)(B).

(g) Any final determination by the head of an DOT component not to disclose a record under this part, or not to grant a request for a fee waiver or reduction, is subject to concurrence by a representative of the General Counsel.

(h) Upon a determination that an appeal will be denied, the requestor will be informed in writing of the reasons for the denial of the request and the names and titles or positions of each person responsible for the determination, and that judicial review of the determination is available in the United States District Court for the judicial district in which the requestor resides or has his or her principal place of business, the judicial district in which the requested records are located, or the District of Columbia.

Subpart E—Time Limits

§ 7.31 Initial determinations.

An initial determination whether to release a record requested pursuant to subpart C of this part will be made within twenty Federal working days after the request is received by the appropriate office in accordance with § 7.14, except that this time limit may be extended by up to ten Federal working days in accordance with § 7.33. The person making the request will be notified immediately of such determination. If the determination is to grant the request, the desired record will be made available as promptly as possible. If the determination is to deny the request, the person making the request will be notified in writing, at the same time he or she is notified of such determination, of the reason for the determination, the right of such person

to appeal the determination, and the name and title of each person responsible for the initial determination to deny the request.

(a) *In general.* Components ordinarily will respond to requests according to their order of receipt.

(b) *Multitrack processing.* (1) A component may use two or more processing tracks by distinguishing between simple and more complex requests based on the amount of work and/or time needed to process the request, or on the number of pages involved.

(2) A component using multitrack processing may provide requesters in its slower track(s) with an opportunity to limit the scope of their requests in order to qualify for faster processing within the specified limits of the component's faster track(s). A component doing so will contact the requestor either by telephone, letter, facsimile, or electronic mail, whichever is most efficient in each case.

(c) *Expedited processing.* (1) Requests and appeals will be taken out of order and given expedited treatment whenever a compelling need is demonstrated and it is determined that the compelling need involves:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) Requests made by a person primarily engaged in disseminating information, with an urgency to inform the public of actual or alleged Federal Government activity.

(2) A request for expedited processing may be made at the time of the initial request for records or at any later time. For a prompt determination, a request for expedited processing must be received by the proper component. Requests must be submitted to the component that maintains the records requested.

(3) A requestor who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing. For example, a requestor within the category in paragraph (c)(1)(ii) of this section, if not a full-time member of the news media, must establish that he or she is a person whose main professional activity or occupation is information dissemination, though it need not be his or her sole occupation. A requestor within the category in paragraph (c)(1)(ii) of this section also must establish a particular urgency to inform the public about the government activity involved in the request, beyond the public's right to know about government activity generally. The formality of certification may be waived as a matter of discretion.

(4) Within ten calendar days of receipt of a request for expedited processing, the proper component will decide whether to grant it and will notify the requestor of the decision. If a request for expedited treatment is granted, the request will be given priority and will be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision will be acted on expeditiously.

§ 7.32 Final determinations.

(a) A determination with respect to any appeal made pursuant to § 7.21 will be made within twenty Federal working days after receipt of such appeal except that this time limit may be extended by up to ten Federal working days in accordance with § 7.33. The person making the request will be notified immediately of such determination pursuant to § 7.21.

(b) *In general.* Components ordinarily will respond to appeals according to their order of receipt.

(c) *Multitrack processing.* (1) A component may use two or more processing tracks by distinguishing between simple and more complex appeals based on the amount of work and/or time needed to process the appeal, or on the number of pages involved.

(2) A component using multitrack processing may provide persons making appeals in its slower track(s) with an opportunity to limit the scope of their appeals in order to qualify for faster processing within the specified limits of the component's faster track(s). A component doing so will contact the person making the appeal either by telephone, letter, facsimile, or electronic mail, whichever is most efficient in each case.

(d) *Expedited processing.* (1) An appeal will be taken out of order and given expedited treatment whenever a compelling need is demonstrated and it is determined that the compelling need involves:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) A request made by a person primarily engaged in disseminating information, with an urgency to inform the public of actual or alleged Federal Government activity.

(2) A request for expedited processing may be made at the time of the appeal or at any later time. For a prompt determination, a request for expedited processing must be received by the proper component, which is the component that is processing the appeal for the records requested.

(3) A requestor who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing. For example, a requestor within the category in § 7.31(c)(1)(ii), if not a full-time member of the news media, must establish that he or she is a person whose main professional activity or occupation is information dissemination, though it need not be his or her sole occupation. A requestor within the category in § 7.31(c)(1)(ii) also must establish a particular urgency to inform the public about the government activity involved in the request, beyond the public's right to know about government activity generally. The formality of certification may be waived as a matter of discretion. A person who was granted expedited processing under § 7.31 need merely certify that the same circumstances apply.

(4) Within ten calendar days of receipt of a request for expedited processing, the proper component will decide whether to grant it and will notify the requestor of the decision. If a request for expedited treatment is granted, the appeal will be given priority and will be processed as soon as practicable. If a request for expedited processing of an appeal is denied, no further administrative recourse is available.

§ 7.33 Extension.

(a) In unusual circumstances as specified in this section, the time limits prescribed in § 7.31 and § 7.32 may be extended by written notice to the person making the request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. Such notice may not specify a date that would result in a cumulative extension of more than 10 Federal working days without providing the requestor an opportunity to modify the request as noted in this section. As used in this paragraph, ''unusual circumstances'' means, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request; or

(3) The need for consultation, which will be conducted with all practicable speed, with any other agency or DOT component having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(b) Where the extension is for more than 10 working days, the DOT component will provide the requestor with an opportunity either to modify the request so that it may be processed within the time limits or to arrange an alternative time period with the component for processing the request or a modified request.

(c) Where a component reasonably believes that multiple requests submitted by a requestor, or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances, and the requests involve clearly related matters, they may be aggregated for the purposes of fees and processing activities. Multiple requests involving unrelated matters will not be aggregated.

Subpart F—Fees

§ 7.41 General.

(a) This subpart prescribes fees for services performed for the public under subparts B and C of this part by DOT.

(b) All terms defined by FOIA apply to this subpart, and the term ''hourly rate'' means the actual hourly base pay for a civilian employee or, for members of the Coast Guard, the equivalent hourly pay rate computed using a 40-hour week and the member's normal basic pay and allowances.

(c) This subpart applies to all employees of DOT, including those of non-appropriated fund activities of the Coast Guard and the Maritime Administration.

(d) This subpart does not apply to any special study, special statistical compilation, table, or other record requested under 49 U.S.C. 329(c). The fee for the performance of such a service is the actual cost of the work involved in compiling the record. All such fees received by DOT in payment of the cost of such work are deposited in a separate account administered under the direction of the Secretary, and may be used for the ordinary expenses incidental to providing the information.

(e) This subpart does not apply to requests from record subjects for records about themselves in DOT systems of records, which are determined in accordance with the Privacy Act, as implemented by DOT regulations (49 CFR part 10).

§ 7.42 Payment of fees.

(a) The fees prescribed in this subpart may be paid by check, draft, or money order, payable to the DOT component where fees were incurred, for deposit in the General Fund of the Treasury of the United States, *e.g.* DOT/FAA.

(b) Charges may be assessed by DOT for time spent searching for requested records even if the search fails to locate records or the records located are determined to be exempt from disclosure. In addition, if records are requested for commercial use, DOT may assess a fee for time spent reviewing any responsive records located to determine whether they are exempt from disclosure.

(c) When it is estimated that the search charges, review charges, duplication fees, or any combination of fees that could be charged to the requestor will likely exceed US $25, the requestor will be notified of the estimated amount of the fees, unless the requestor has indicated in advance his or her willingness to pay fees as high as those anticipated. In cases where a requestor has been notified that actual or estimated fees may amount to more than US $25, the request will be deemed not to have been received until the requestor has agreed to pay the anticipated total fee. The notice will also inform the requestor how to consult with the appropriate DOT officials with the object of reformulating the request to meet his or her needs at a lower cost.

(d) Payment of fees may be required prior to actual duplication or delivery of any releasable records to a requestor. However, advance payment, *i.e.*, before work is commenced or continued on a request, may not be required unless:

(1) Allowable charges that a requestor may be required to pay are likely to exceed US $250; or

(2) The requestor has failed to pay within 30 days of the billing date fees charged for a previous request to any part of DOT.

(e) When paragraph (d)(1) of this section applies, the requestor will be notified of the likely cost and, where he/she has a history of prompt payment of FOIA fees, requested to furnish satisfactory assurance of full payment of FOIA fees. Where the requestor does not have any history of payment, he or she may be required to make advance payment of any amount up to the full estimated charges.

(f) When paragraph (d)(2) of this section applies, the requestor will be required to demonstrate that the fee has, in fact, been paid or to pay the full amount owed, including any applicable interest, late handling charges, and penalty charges as discussed in paragraphs (g) and (h) of this section. The requestor will also be required to make an advance payment of the full amount of the estimated fee before processing of a new request or continuation of a pending request is begun.

(g) DOT will assess interest on an unpaid bill starting on the 31st day following the day on which the notice of the amount due is first mailed to the requestor. Interest will accrue from the date of the notice of amount due and will be at the rate prescribed in 31 U.S.C. 3717. Receipt by DOT of a payment for the full amount of the fees owed within 30 calendar days after the date of the initial billing will stay the accrual of interest, even if the payment has not been processed.

(h) If payment of fees charged is not received within 30 calendar days after the date the initial notice of the amount due is first mailed to the requestor, an administrative charge will be assessed by DOT to cover the cost of processing and handling the delinquent claim. In addition, a penalty charge will be applied with respect to any principal amount of a debt that is more than 90 days past due. Where appropriate, other steps permitted by Federal debt collection statutes, including disclosure to consumer reporting agencies and use of collection agencies, will be used by DOT to encourage payment of amounts overdue.

(i) Notwithstanding any other provision of this subpart, when the total amount of fees that could be charged for a particular request (or aggregation of requests) under subpart C of this part, after taking into account all services that must be provided free of, or at a reduced, charge, is less than US $10.00 DOT will not make any charge for fees.

§ 7.43 Fee schedule.

The rates for manual searching, computer operator/programmer time and time spent reviewing records will be calculated based on the grades and rates established by the Washington-Baltimore Federal White-Collar Pay Schedule or equivalent grades, as follows:

When performed by employees:

GS–1 through GS–8—Hourly rate of GS–5 step 7 plus 16%

GS–9 through GS–14—Hourly rate of GS–12 step 7 plus 16%

GS–15 and above—Hourly rate of GS–15 step 7 plus 16%

(a) The standard fee for a manual search to locate a record requested under subpart C of this part, including making it available for inspection, will be determined by multiplying the searcher's rate as calculated from the chart in this section and the time spent conducting the search.

(b) The standard fee for a computer search for a record requested under subpart C of this part is the actual cost. This includes the cost of operating the central processing unit for the time directly attributable to searching for records responsive to a FOIA request and the operator/programmer's rate as calculated from the chart for costs apportionable to the search.

(c) The standard fee for review of records requested under subpart C of this part is the reviewer's rate as calculated from the chart multiplied by the time he/she spent determining whether the requested records are exempt from mandatory disclosure.

(d) The standard fee for duplication of a record requested under subpart C of this part is determined as follows:

(1) Per copy of each page (not larger than 8.5 x 14 inches) reproduced by photocopy or similar means (includes costs of personnel and equipment)—US $0.10.

(2) Per copy prepared by computer such as tapes or printout—actual costs, including operator time.

(3) Per copy prepared by any other method of duplication—actual direct cost of production.

(e) Depending upon the category of requestor, and the use for which the records are requested, in some cases the fees computed in accordance with the standard fee schedule in paragraph (d) of this section will either be reduced or not charged, as prescribed by other provisions of this subpart.

(f) The following special services not required by FOIA may be made available upon request, at the stated fees: Certified copies of documents, with DOT or DOT component seal (where authorized)—US $4.00; or true copy, without seal—US $2.00.

§ 7.44 Services performed without charge or at a reduced charge.

(a) A fee is not to be charged to any requestor making a request under subpart C of this part for the first two hours of search time unless the records are requested for commercial use. For purposes of this subpart, when a computer search is required two hours of search time will be considered spent when the hourly costs of operating the central processing unit used to perform the search added to the computer operator's salary cost (hourly rate plus 16 percent) equals two hours of the computer operator's salary costs (hourly rate plus 16 percent).

(b) A fee is not to be charged for any time spent searching for a record requested under subpart C if the records are not for commercial use and the requestor is a representative of the news media, an educational institution whose purpose is scholarly research, or a non-commercial scientific institution whose purpose is scientific research.

(c) A fee is not to be charged for duplication of the first 100 pages (standard paper, not larger than 8.5 x 14 inches) of records provided to any requestor in response to a request under Subpart C unless the records are requested for commercial use.

(d) A fee is not to be charged to any requestor under subpart C to determine whether a record is exempt from mandatory disclosure unless the record is requested for commercial use. A review charge may not be charged except with respect to an initial review to determine the applicability of a particular exemption to a particular record or portion of a record. A review charge may not be assessed for review at the administrative appeal level. When records or portions of records withheld in full under an exemption that is subsequently determined not to apply are reviewed again to determine the applicability of other exemptions not previously considered, this is considered an initial review for purposes of assessing a review charge.

(e) Documents will be furnished without charge or at a reduced charge if the official having initial denial authority determines that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requestor.

(f) Factors to be considered by DOT officials authorized to determine whether a waiver or reduction of fees will be granted include:

(1) Whether the subject matter of the requested records concerns the operations or activities of the Federal government;

(2) Whether the disclosure is likely to contribute to an understanding of Federal government operations or activities;

(3) Whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requestor or a narrow segment of interested persons;

(4) Whether the contribution to public understanding of Federal government operations or activities will be significant;

(5) Whether the requestor has a commercial interest that would be furthered by the requested disclosure; and

(6) Whether the magnitude of any identified commercial interest to the requestor is sufficiently large in comparison with the public interest in disclosure that disclosure is primarily in the commercial interest of the requestor.

(g) Documents will be furnished without charge or at a reduced charge if the official having initial denial authority determines that the request concerns records related to the death of an immediate family member who was, at the time of death, a DOT employee or a member of the Coast Guard.

(h) Documents will be furnished without charge or at a reduced charge if the official having initial denial authority determines that the request is by the victim of a crime who seeks the record of the trial or court-martial at which the requestor testified.

§ 7.45 Transcripts.

Transcripts of hearings or oral arguments are available for inspection. Where transcripts are prepared by a nongovernmental contractor, and the contract permits DOT to handle the reproduction of further copies, § 7.43 applies. Where the contract for transcription services reserves the sales privilege to the reporting service, any duplicate copies must be purchased directly from the reporting service.

§ 7.46 Alternative sources of information.

In the interest of making documents of general interest publicly available at as low a cost as possible, alternative sources will be arranged whenever possible. In appropriate instances, material that is published and offered for sale may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402; U.S. Department of Commerce's National Technical Information Service (NTIS), Springfield, Virginia 22151; or National Audio-Visual Center, National Archives and Records Administration, Capital Heights, MD 20743–3701.

Rodney E. Slater,

Secretary of Transportation.

[FR Doc. 98–18757 Filed 7–15–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[I.D. 071098I]

Atlantic Tuna Fisheries; Atlantic Bluefin Tuna Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Catch limit adjustment.

SUMMARY: NMFS adjusts the daily catch limit for the Angling category fishery for Atlantic Bluefin Tuna (BFT) in all areas to one fish from the large school or small medium size class per vessel. The intent of this action is to ensure reasonable fishing opportunities without risking overharvest of the quota established for the Angling category fishery.

DATES: Effective 1:00 a.m. local time on July 16, 1998, through December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, 301–713–2347, or Mark Murray-Brown, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285.

Implementing regulations for the Atlantic tuna fisheries at § 285.24 allow for adjustments to the daily catch limits in order to provide for maximum utilization of the quota spread over the longest possible period of time. The Assistant Administrator for Fisheries, NOAA (AA) may increase or reduce the per angler catch limit for any size class BFT or may change the per angler limit to a per boat limit or a per boat limit to a per angler limit.

NMFS previously adjusted the southern area (south of 38°47' N. lat.) daily catch limit to one fish per angler, with a maximum of three fish per vessel, from the school size class and one fish per vessel from the large school or small medium size class (63 FR 35161, June 29, 1998). The duration of the catch limit adjustment was specified as the period of June 26 through July 27, 1998. However, NMFS indicated that an interim closure or additional catch limit adjustment may be necessary to enhance scientific data collection from all geographic areas, and that such action would be announced through publication in the **Federal Register**.

Based on information collected by NMFS through dockside and telephone surveys and through the Automated Catch Reporting System (reported landings and estimated fishing effort), NMFS has determined that recent catch rates in the last few weeks are considerably higher than those for the same time period in 1997, which formed the basis for the previous catch limit adjustment. Therefore, NMFS has determined that an additional catch limit adjustment is warranted for all areas, i.e., north and south of 38°47' N. lat. The catch limit for all areas is adjusted as follows: No more than one BFT from the large school or small medium size class (measuring 47 to less than 73 inches) may be retained each day per Angling category vessel. This daily catch limit adjustment is effective July 16 through December 31, 1998, or until further notice.

Additional adjustments to the daily catch limit or closures, if any, shall be announced through publication in the **Federal Register**. In addition, anglers may call the Atlantic Tunas Information Line at 888–USA-TUNA (888–872–8862), 301–713–1279, or 978–281–9305 for updates on quota monitoring and catch limit adjustments.

Anglers aboard Charter/Headboat vessels, when engaged in recreational fishing for school, large school, and small medium BFT, are subject to the same rules as anglers aboard Angling category vessels. All BFT landed under the Angling category quota outside of North Carolina must be reported within 24 hours of landing to the NMFS Automated Catch Reporting System by phoning 888–USA-TUNA (888–872–8862), or in North Carolina, to a reporting station. For information about the North Carolina Harvest Tagging Program, including reporting station locations, call 800–338–7804.

The fishery for large medium and giant BFT (measuring 73 inches or greater) is not affected by this closure and remains open in all areas until further notice, subject to the trophy fish limit of one-per-vessel-per-year. Anglers should verify that the trophy category remains open by calling the Atlantic Tunas Information Line prior to each fishing trip. In addition, anglers may continue to tag and release BFT of all sizes under the NMFS tag-and-release program (50 CFR 285.27).

Classification

This action is taken under 50 CFR 285.24(d)(3) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.*

Dated: July 10, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–18930 Filed 7–13–98; 10:01 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208297–8054–02; I.D. 071098D]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Central Regulatory Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for Pacific ocean perch in the Central Regulatory Area of the Gulf of Alaska management area (GOA). This action is necessary to fully utilize the 1998 total allowable catch (TAC) of Pacific ocean perch in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 12, 1998.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(c)(3)(ii), the Final 1998 Harvest Specifications of Groundfish for the GOA (63 FR 12027, March 12, 1998) established the amount of the 1998 TAC of Pacific ocean perch in the Central Regulatory Area of the Gulf of Alaska 6,600 metric tons (mt).

The Administrator, Alaska Region, NMFS (Regional Administrator), has established a directed fishing allowance of 5,600 mt, and set aside the remaining 1,000 mt as bycatch to support other anticipated groundfish fisheries. The fishery for Pacific ocean perch in the Central Regulatory Area of the GOA was closed to directed fishing under § 679.20(d)(1)(iii) on July 6, 1998, (63 FR 37071, July 9, 1998).

NMFS has determined that as of July 9, 1998, 2,000 mt remain in the directed fishing allowance. Therefore, NMFS is terminating the previous closure and is opening directed fishing for Pacific ocean perch in the Central Regulatory Area of the GOA.

Classification

All other closures remain in full force and effect. This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to allow full utilization of the Pacific ocean perch TAC. Providing prior notice and opportunity for public comment for this action is impracticable and contrary to the public interest. Further delay would only disrupt the FMP objective of providing the Pacific ocean perch TAC for harvest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 10, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–18893 Filed 7–10–98; 4:48 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208297–8054–02; I.D. 071098A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Eastern Regulatory Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for Pacific ocean perch in the Eastern Regulatory Area of the Gulf of Alaska management area (GOA). This action is necessary to fully utilize the 1998 total allowable catch (TAC) of Pacific ocean perch in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 12, 1998.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(c)(3)(ii), the Final 1998 Harvest Specifications of Groundfish for the GOA (63 FR 12027, March 12, 1998) established the amount of the 1998 TAC of Pacific ocean perch in the Eastern Regulatory Area of the Gulf of Alaska as 2,366 metric tons (mt).

The Administrator, Alaska Region, NMFS (Regional Administrator), has established a directed fishing allowance of 2,116 mt, and set aside the remaining 250 mt as bycatch to support other anticipated groundfish fisheries. The fishery for Pacific ocean perch in the Eastern Regulatory Area of the GOA was closed to directed fishing under § 679.20(d)(1)(iii) on July 6, 1998, (63 FR 37071, July 9, 1998).

NMFS has determined that as of July 9, 1998, 1,900 mt remain in the directed fishing allowance. Therefore, NMFS is terminating the previous closure and is opening directed fishing for Pacific ocean perch in the Eastern Regulatory Area of the GOA.

Classification

All other closures remain in full force and effect. This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to allow full utilization of the Pacific ocean perch TAC. Providing prior notice and opportunity for public comment for this action is impracticable and contrary to the public interest. Further delay would only disrupt the FMP objective of providing the Pacific ocean perch TAC for harvest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 10, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–18892 Filed 7–10–98; 4:48pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208297–8054–02; I.D. 071098C]

Fisheries of the Economic Exclusive Zone Off Alaska; ''Other Rockfish'' Species Group in the Eastern Regulatory Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for the ''other rockfish'' species group in the Eastern Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to fully utilize the total allowable catch (TAC) of ''other rockfish'' in that area.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), July 12, 1998, until 2400 hours, A.l.t., December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(c)(3)(ii), the Final 1998 Harvest Specifications of Groundfish for the GOA (63 FR 12027, March 12, 1998) established the amount of the 1998 TAC of ''other rockfish'' in the Eastern Regulatory Area of the Gulf of Alaska as 1,500 metric tons (mt). The Final 1998 Harvest Specifications of Groundfish for the GOA also closed directed fishing for ''other rockfish'' in the Eastern Regulatory Area of the GOA (see § 679.20(d)(1)(iii)) in anticipation that the TAC would be needed as incidental catch to support other anticipated groundfish fisheries during 1998.

The Regional Administrator has determined that the entire TAC for ''other rockfish'' will not be needed as incidental catch and is establishing a directed fishing allowance of 1,400 mt and is setting aside the remaining 100 mt as bycatch to support other anticipated groundfish fisheries.

NMFS has determined that as of July 9, 1998, 1,400 mt remain in the directed fishing allowance. Therefore, NMFS is terminating the previous closure and is opening directed fishing for ''other rockfish'' in the Eastern Regulatory Area of the GOA.

All other closures remain in full force and effect. This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to allow full utilization of the ''other rockfish'' TAC. Providing prior notice and opportunity for public comment for this action is impracticable and contrary to the public interest. Further delay would only disrupt the FMP objective of providing the ''other rockfish'' TAC for harvest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived. All other closures remain in full force and effect.

Classification

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 10, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–18891 Filed 7–10–98; 4:48 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208298–8055–02; I.D. 071098B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Central Aleutian District of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Central Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 1998 total allowable catch (TAC) of Pacific ocean perch in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 11, 1998, until 2400 hrs, A.l.t., December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and CFR part 679.

The 1998 TAC of Pacific ocean perch for the Central Aleutian District was established by Final 1998 Harvest Specifications of Groundfish for the BSAI (63 FR 12689, March 16, 1998) as 3,192 metric tons (mt). See § 679.20(c)(3)(iii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 1998 TAC for Pacific ocean perch in the Central Aleutian District will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,192 mt, and is setting aside the remaining 1,000 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Central Aleutian District.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 1998 TAC of Pacific ocean perch for the Central Aleutian District of the BSAI. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 10, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–18890 Filed 7–10–98; 4:48 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 136
Thursday, July 16, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

RIN 0584–AC55

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Requirements for and Evaluation of WIC Program Requests for Bids for Infant Formula Rebate Contracts

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: At the time the current cost containment regulations were published in 1989, there were only minor differences in infant formula wholesale prices and few differences in types of infant formulas offered by manufacturers, i.e., milk-and soy-based infant formula. However, current wholesale prices vary considerably among manufacturers for similar formulas and several new infant formulas have emerged on the market over the last decade. Therefore, to reflect market changes in the infant formula industry and to optimize competition in the WIC Program's infant formula rebate contracts, this proposed rule would require WIC State agencies to award infant formula rebate contracts based on the lowest net price, allowing highest gross rebate as a basis of award only when retail prices of the different brands of infant formula vary, on average, by 5 percent or less. Additionally, this proposed rule would define the types and forms of infant formula that must be included in cost containment systems. It would also expand on conditions that must be met for the issuance of infant formulas not covered by rebate contracts.

DATES: To be assured of consideration, written comments on this rule must be received on or before September 14, 1998.

ADDRESSES: Comments may be mailed to Ronald J. Vogel, Acting Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 540, Alexandria, Virginia 22302, (703) 305–2746. All written comments will be available for public inspection during regular business hours (8:30 a.m.–5:00 p.m., Monday through Friday) at the above address.

FOR FURTHER INFORMATION CONTACT: Deborah McIntosh, Chief, Program Analysis and Monitoring Branch, Supplemental Food Programs Division, Food and Nutrition Service, USDA, phone number (703) 305–2710.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been reviewed by the Office of Management and Budget, and has been determined to be economically significant under Executive Order 12866, and major under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. Chapter 8).

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Shirley R. Watkins, Under Secretary, Food, Nutrition and Consumer Services, has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule, if implemented, will help ensure that WIC State agencies will be able to serve the maximum number of eligible applicants possible within their grant levels provided by the Federal government by removing current regulatory ambiguities that have resulted in the proliferation of protests of infant formula rebate contract awards. This rule further defines evaluation procedures for WIC State agencies' infant formula rebate contracts. While some WIC local agencies and WIC vendors may be small entities, the changes proposed by this rule will not affect them.

Executive Order 12372

The Special Supplemental Nutrition Program for Women, Infants and Children (WIC) is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.557. For the reasons set forth in the final rule in 7 CFR 3015, Subpart V, and related Notice (48 FR 29115, June 24, 1983), this program is included in the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have a preemptive effect with respect to any State or local laws, regulations, or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the ''Effective Dates'' paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the applications of its provisions, all applicable administrative procedures must be exhausted.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Food and Nutrition Service generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Food and Nutrition Service to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private section of $100 million or more in any one year. Thus today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the Food and Nutrition Service is submitting for

public comment the changes in the information collection burden that would result from the adoption of the proposals in the rule.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Laura Oliven, Desk Officer, Officer of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 (a copy may also be sent to Deborah McIntosh at the address below). For further information, or for copies of the information collection, please contact Deborah McIntosh, Branch Chief, Program Analysis and Monitoring Branch, Supplemental Food Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 540, Alexandria, Virginia 22302–1594.

Comments and recommendations on the proposed information collection must be received by September 14, 1998. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Title: WIC Program Regulations.

OMB Number: 0584–0043.

Expiration Date: May 31, 1999.

Type of Request: Revision of a currently approved collection.

Abstract: This rule proposed would require documentation from a health care professional for any infant formula that is not covered by the State agency's infant formula rebate contract. Proposed documentation would include the following items: brand name of the formula prescribed; medical diagnosis warranting the prescribed formula; length of time the prescribed formula is medically required by the participant; and signature of the health care professional requesting the formula.

Respondents: Licensed health care professionals.

Estimated Number of Respondents: 16,000.

Estimated Number of Responses per Respondent: One.

Estimate of Burden: The proposed estimates of the reporting burden for information collections affected by this rule are detailed below.

Licensed health care professional	Respondents	Frequ.	Hrs/Resp	Total Hrs.
Proposed	16,000	1	0.03	533

Estimated Total Annual Burden on Respondents: 533 hours.

Background on Infant Formula Cost Containment

In response to rising food costs in the 1980's and the desire to use their food grants more efficiently, several WIC State agencies initiated infant formula rebate systems. In these early, voluntary infant formula rebate systems, a WIC State agency received rebate payments from one or more infant formula manufacturers based on: (1) the number of cans of their infant formula purchased with WIC funds by participants at retail outlets, or (2) the manufacturer's overall market share in the State.

At the time, infant formula expenditures represented almost 40 percent of all WIC food costs, making infant formula rebates an important cost-containment strategy. In fact, in fiscal year 1988, these rebate savings amounted to more than $30 million and grew to about $250 million in fiscal year 1989. Rebate savings escalated to $1.18 billion in fiscal year 1996, allowing the WIC Program to serve an additional 1.7 million participants. United States Department of Agriculture (The Department) figures show that nearly one out of every four WIC participants is supported with rebate savings. Without these savings, millions of low-income women, infants and children would not have the advantage of nutritious supplemental foods, nutrition education, and health care referrals provided by the WIC Program.

Legislative Background

Building on the success of voluntary State infant formula rebate systems, Public Law 100–460, the Department's fiscal year 1989 appropriations act required all WIC State agencies (except Indian State agencies with participation levels under 1,000) to explore the feasibility of cost-containment measures for infant formula and implement such measures where feasible. As a result of this mandatory legislative requirement, WIC State agencies with participation levels over 1,000 implemented infant formula cost-containment measures, primarily infant formula rebate systems. With the passage of the Child Nutrition and WIC Reauthorization Act of 1989 (section 123(a)(6) of Public Law 101–147), these cost containment requirements were made a permanent program feature. As a result, section 17(h)(8)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(8)(A)) WIC State agencies are required to implement a competitive bidding system for the procurement of infant formula, or any other infant formula cost containment measure that yields savings equal to or greater than savings generated by a competitive bidding system. As defined in section 17(b)(17) of the Child Nutrition Act of 1966 (42 U.S.C. 1786 (b)(17)), competitive bidding is a process by which a WIC State agency selects a single source offering the lowest price, as determined by the submission of sealed bids, for the product(s) for which bids are sought.

Since the time when infant formula cost containment legislation was enacted, the infant formula industry has changed considerably. The manufacturers have changed and product lines have expanded. The Department believes that the current rebate regulations need to be updated to reflect these changes and should include provisions which accommodate future possible market dynamics. Therefore, this proposed rule addresses numerous major issues, discussed in detail below.

Lowest Net Price Cost of Infant Formula

Competition is a critical factor in achieving the lowest possible price for infant formula. Without adequate competition, manufacturers may offer lower rebate bids and the WIC Program could experience a substantial increase in food package costs. It is imperative, therefore, that fair and open competition in the awarding of infant formula rebate contracts be a major policy objective of the national WIC Program.

Current program regulations at 7 CFR section 246.16(k)(1) require WIC State agencies to evaluate infant formula rebate bids by one of two methods: (1) the lowest net wholesale cost, or (2) the highest rebate offered. However, because the current wholesale prices for various brands of infant formula differ considerably, manufacturers that have a significantly lower wholesale cost(s) are effectively placed at a competitive disadvantage in the bidding process if a WIC State agency evaluates bids based on the highest rebate offered. This competitive disadvantage was addressed by Congress in Public Law 104–180, the Department's fiscal year 1997 agriculture appropriations act and again in Public Law 105–86, the Department's fiscal year 1998 appropriations act. Both laws require State agencies to award infant formula rebate contracts on the basis of the lowest net price, unless the State agency demonstrates to the satisfaction of the Secretary that the weighted average retail price for different brands of infant formula in the State does not vary by more than 5 percent. ''Net price'' is defined in section 17(b)(20) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)(20)) and in section 246.2 of the program regulations as the difference between the manufacturer's wholesale price for infant formula and the rebate level or the discount offered by the manufacturer.

When a WIC State agency evaluates bids based on the lowest net price per unit, the rebate offered by the manufacturer is subtracted from the manufacturer's wholesale price per unit. With this evaluation method, the manufacturer offering the lowest net price for infant formula wins the bid. This evaluation method recognizes the highest discount a manufacturer will provide.

New Requirement for Evaluating Rebate Bids

This proposed rule would require in section 246.16(k)(1)(iv) that WIC State agencies evaluate bids for infant formula rebate contracts on the basis of the lowest net price, with one exception. A WIC State agency may evaluate the bids received based on the highest rebate earned if the WIC State agency demonstrates to the satisfaction of the Food and Nutrition Service prior to the bid solicitation that the weighted average retail price for different brands of iron-fortified, milk-based infant formula in the State vary by 5 percent or less. The retail price must include WIC and non-WIC vendors in the State. In these cases, the retail prices of all manufacturer's formulas are comparable and consequently, highest rebate would yield approximately the same benefit as lowest net price.

Vendor Controls

There is concern among some WIC State agencies that if bids are evaluated by the lowest net price, the optimal rebate savings from the bid evaluation may not be realized by the WIC Program because the actual cost of infant formula depends on the vendor's retail price charged, less the rebate paid to the WIC State agency. For example, vendors who purchase one infant formula at a lower wholesale price than another do not invariably pass the savings on to their customers. As a result, such vendors charge a retail price for the infant formula that is approximately the same as for other formulas regardless of the wholesale cost. In such instances, the grocery store earns a larger profit on the formula with a lower wholesale cost. Consequently, some or all of the cost containment advantage of the rebate savings would be offset by the increased retail price. State agencies should be alert to these situations. The Department reminds State agencies that they may use WIC food price as a criteria when authorizing or reauthorizing vendor participation.

Definitions Pertaining to Infant Formula

Compliance with the Federal Food, Drug and Cosmetic Act (FDC Act) ensures that all infant formulas sold in the U.S. are safe, effective and properly labeled. The Food and Drug Administration (FDA), U.S. Department of Health and Human Services (DHHS), is the Federal agency with the exclusive legal authority to set the standards for infant formula and to monitor the production of infant formulas in this country. This proposed rule would define infant formula and exempt infant formula as those terms used in the FDC Act and the FDA's implementing regulations. By cross referencing the requirements in the FDC Act and regulations, any changes to these requirements will automatically apply to the WIC regulations.

Currently, the FDC Act defines infant formula as ''a food which purports to be or is represented for special dietary use solely as a food for infants by reason of its simulation of human milk or its suitability as a complete or partial substitute for human milk.'' The FDC Act defines exempt infant formula as an ''infant formula which is represented and labeled for use by an infant who (A) has an inborn error of metabolism, or a low birth weight, or (B) who otherwise has an unusual medical or dietary problem * * *'' and exempts such formulas from certain FDC Act requirements.

Types and Forms of Infant Formula Subject to Bid Requirement

Section 17(h)(8)(A) of the Child Nutrition Act of 1966 requires WIC State agencies to use a competitive bidding system, or any other system that yields savings equal or greater, with respect to the procurement of infant formula. Current regulations at section 246.16(k) expand on the law, requiring most WIC State agencies to ''implement infant formula cost containment measures for each of the types and forms of infant formulas prescribed to the majority of participants, i.e., milk and soy-based iron fortified, liquid concentrate formulas, or whatever other types and forms of formula routinely prescribed.''

As a result of the introduction of various infant formulas to the market, this proposed rule would clarify and expand what infant formulas must be included in each State agency's cost containment system.

First, this proposed rule also would change the basis by which rebate contracts are evaluated by State agencies. To simplify the bidding process, section 246.16(k)(1)(i) will require that the bid evaluation process for infant formula rebates use as the common basis of bids only those offered for iron-fortified milk-based infant formula which meet the nutritional requirements of a Food Package I or II formula (section 246.10(c)(1)(i) and (2)) and can be routinely issued to the majority of generally healthy, full-term infants. However, rebates will be required for all non-exempt formulas produced by the manufacturer. While product lines vary somewhat among manufacturers, all manufacturers offer formulas to accommodate infants who cannot tolerate lactose. Thus, for bidding purposes, the estimated number of infants shall include all infants the State agency expects to participate less those who are breastfeeding or prescribed exempt formulas.

This proposed rule would require each manufacturer awarded a WIC infant formula rebate contract to pay a rebate on any infant formula in its product line that is not an exempt formula that is issued by the WIC State agency. This rebate must yield the same percentage discount on the wholesale cost as the iron-fortified milk-based infant formula for which the manufacturer submitted a winning bid. For example, if the wholesale price for the iron-fortified milk-based infant formula is $2 per can and the rebate is $1.50 per can (75% of the wholesale

price), the rebate for any other non-exempt infant formula (e.g., soy-based formula) produced by the winning manufacturer would be 75 percent of the respective wholesale price of the other infant formula issued. The same infant formulas would be required to be included in any alternate cost containment system; the program regulations at section 246.16(k)(2) concerning the comparative method of implementing a cost containment system would continue to require the alternative system to cover the identical types and forms of infant formula as in the competitive bidding system.

This requirement does not obligate WIC State agencies to approve or issue all the types of infant formula covered in the contract. In fact, State agencies are encouraged to carefully limit the issuance of all alternative formulas under WIC Food Packages I and II to only those infants who have warranted nutritional needs that cannot be appropriately met by the iron-fortified milk-based infant formula upon which the bid was submitted. Limiting the issuance of formulas other than these is important to WIC State agencies for several reasons: manageability, ease of transition to another WIC contract formula manufacturer that has a different product line, and WIC vendor integrity.

Infant Formula Documentation Requirements

This proposed rule also would revise existing language in section 246.10 concerning a physician's determination of the need for a particular formula and documentation of that determination. Current WIC regulations state that a physician must authorize the issuance of any formula that does not meet the requirements of an iron-fortified infant formula as described in section 246.10(c)(1)(i). Examples of formulas that do not meet these requirements include low-iron infant formulas and many designed to meet the nutritional needs of infants with documented medical conditions. Questions have arisen about whether a medical prescription is required for documentation in these instances and whether someone other than a physician may make the determination in those State in which other health care professionals are authorized to write medical prescriptions. This proposed rule would make clear that the determination of the need for an alternate formula may be made by any health care professional authorized by State law to write medical prescriptions and that medical documentation must be issued by that health care professional before an alternate formula may be issued by WIC local agencies. This proposed rule would also strengthen medical documentation requirements. First, it would include all noncontract formulas among those formulas requiring medical documentation whether or not they comply with the requirements of an iron-fortified infant formula as described in section 246.10(c)(1)(i). This addition is intended to appropriately limit the issuance of noncontract infant formulas to those cases warranted for medical reasons so WIC State agencies can maximize their infant formula contract rebate savings to serve the greatest number of needy participants.

Second, the proposed rule would clarify that all exempt infant formulas (i.e., those designed for use with infants who have special dietary needs or serious medical conditions) must be supported with medical documentation. This requirement is not new; however, because this proposed rule introduces the term ''exempt infant formula,'' the Department believes it will be helpful to include this new term in connection with existing medical documentation requirements.

To summarize the medical documentation requirements, this proposed rule would require medical documentation for all noncontract infant formula. Medical documentation would continue to be required for low-iron infant formula and for all exempt infant formulas.

The Department encourages comments specifically regarding the requirement of medical documentation for all non-contract infant formula.

List of Subjects in 7 CFR Part 246

Administrative practice and procedure, Civil rights, Food assistance programs, Food donations, Grant programs—health, Grant programs—social programs, Indians, Infants and children, Maternal and child health, Nutrition, Nutrition education, Penalties, Reporting and recordkeeping requirements, Public assistance programs, WIC, Women.

PART 246—SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN

Accordingly, 7 CFR Part 246 is proposed to be amended as follows:

1. The authority citation for part 246 continues to read as follows:

Authority: 42 U.S.C. 1786.

2. In section 246.2, the definitions of *Exempt infant formula* and *Infant formula* are added in alphabetical order to read as follows:

§ 246.2 Definitions

* * * * *

Exempt infant formula means an infant formula that meets the requirements for an exempt formula under section 412(h) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 350a(h)) and the regulations at 21 U.S.C. Parts 106 and 107.

* * * * *

Infant formula means infant formula as defined in section 201(z) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321(z)) and that meets the requirements for infant formula under section 412 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321) and the regulations at 21 U.S.C. Part 106 and 107.

* * * * *

3. In section 246.10:

a. Sentences 1 through 4 in paragraph (c)(1)(i) are revised.

b. The introductory text in paragraph (c)(3) is revised.

The revisions read as follows:

§ 246.10 Supplemental foods

* * * * *

(c) * * *

(1) *Food Package I—Infants 0 Through 3 Months.* (i) Iron-fortified infant formula, which is a complete formula not requiring the addition of any ingredients other than water prior to being served in a liquid state, and which contains at least 10 milligrams of iron per liter of formula at standard dilution which supplies 67 kilocalories per 100 milliliters; i.e., approximately 20 kilocalories per fluid ounce of formula at standard dilution. The State agency's contract brand of such iron-fortified formula shall be provided, unless a licensed health care professional authorized to write medical prescriptions under State law determines that the infant has a medical condition which dictates the use of other infant formula including, but not limited to, medical conditions which contraindicate the use of iron-fortified formula, metabolic disorders, inborn errors of amino acid metabolism, gastrointestinal disorders, malabsorption syndromes, and allergies. Provision of formula, other than the State agency's contract brand iron-fortified formula, shall be supported with medical documentation. This documentation shall be kept in the participant's certification file and shall include the: brand name of the formula prescribed; medical diagnosis warranting the prescribed formula; length of time the prescribed formula is medically required by the participant; and signature of the health care

professional requesting the formula. Low-calorie formulas may not be prescribed solely for the purpose of managing body weight of infants. * * *

* * * * *

(3) *Food Package III—Children/Women with Special Dietary Needs.* Children and women with special dietary needs may receive the following supplemental foods if a licensed health care professional, authorized to write medical prescriptions under State law, determines that the participant has a medical condition which precludes or restricts the use of conventional foods and necessitates the use of a formula including, but not limited to, metabolic disorders, inborn errors of amino acid metabolism, gastrointestinal disorders, malabsorption syndrome and allergies. The supplemental foods described below are not authorized solely for the purpose of enhancing nutrient intake or managing body weight of children and women participants. Any formula issued shall be supported with a medical documentation. This documentation shall be kept in the participant's certification file and shall include at a minimum the: brand name of the formula prescribed; medical diagnosis warranting the prescription; length of time the prescribed formula is medically required by the participant; and signature of the health care professional requesting the formula.

* * * * *

4. In section 246.16:

a. The introductory text of paragraph (k) is revised.

b. Paragraph (k)(1) is revised.

c. The first sentence in paragraph (k)(2)(i)(A) is revised.

The revisions read as follows:

§ 246.16 Distribution of funds.

* * * * *

(k) *Requirements for infant formula procurement.* Unless granted a waiver under paragraph (l) of this section, all State agencies with retail food delivery systems (except Indian State agencies with 1000 or fewer participants in April of any fiscal year, which shall be exempted for the following fiscal year) shall implement an infant formula cost containment measure through one of the two methods cited below:

(1) *Single-supplier competitive method.* The single-supplier competitive method is a solicitation of sealed competitive bids for rebates from infant formula manufacturers, as follows:

(i) Invitations for bids shall be for each of the forms (e.g., concentrated liquid, powdered and ready-to-feed) of a single iron-fortified, milk-based infant formula that:

(A) Meets the requirements of an iron-fortified infant formula as described in § 246.10(c)(1)(i);

(B) Can be routinely issued to the majority of generally healthy, full-term infants.

(ii) State agencies shall solicit bids based on an estimated total amount of infant formula it expects to issue. Such estimates shall be based on the current number of infant participants, excluding those infants exclusively breastfed and those issued an exempt infant formula. The estimated total amount of infant formula shall be expressed in terms of the proportion of each form of formula expected to be issued (e.g., concentrated liquid, powdered and ready-to-feed).

(iii) Invitations for bid and contracts shall require the manufacturer to pay a rebate for any nonexempt infant formula the winning bidder produces that is issued by the State agency. The rebate for each of these other infant formulas shall yield the same percentage discount on the wholesale cost as the rebate for the infant formula described in paragraph (k)(1)(i) of this section.

(iv) State agencies shall award the contract(s) as follows:

(A) Based on the lowest net price for the infant formula described in paragraph (k)(1)(i) of this section; or

(B) Based on the highest rebate, provided the State agency demonstrates to the satisfaction of FNS before issuing the invitation for bids that the weighted average retail prices for different brands of infant formula in the State that meet the requirements of paragraph (k)(1)(i) of this section vary by 5 percent or less. The weighted average retail price must take into account the proportion of each infant formula the State agency expects to issue and both authorized food vendors and stores which do not participate in the program in the State.

(2) * * *

(i) *Food cost savings.*

(A) *Single Supplier Competitive System.* The State agency shall project food costs savings in the single-supplier competitive system based on the net wholesale price or highest rebate, as described in paragraph (k)(1)(v)(B) of this section, the total number of units of the specified types and forms of infant formula to be purchased under the program less the number of units of alternative brands anticipated to be prescribed by physicians and purchased by participants. * * *

* * * * *

Dated: July 10, 1998.

Shirley R. Watkins,

Under Secretary, Food, Nutrition and Consumer Services.

[FR Doc. 98–18957 Filed 7–15–98; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV98–905–3 PR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate from $0.0035 to $0.00385 per 4/5 bushel carton established for the Citrus Administrative Committee (Committee) under Marketing Order No. 905 for the 1998–99 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of citrus grown in Florida. Authorization to assess citrus handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period begins August 1 and ends July 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by August 17, 1998.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 205–6632. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Southeast Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883–2276; telephone: (941) 299–4770, Fax: (941) 299–5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720-2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington,

DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

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

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

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

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

This rule would increase the assessment rate established for the Committee for the 1998–99 and subsequent fiscal periods from $0.0035 to $0.00385 per 4/5 bushel carton handled.

The Florida citrus marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

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

The Committee met on May 22, 1998, and unanimously recommended 1998–99 expenditures of $242,275 and an assessment rate of $0.00385 per 4/5 bushel carton of citrus. In comparison, last year's budgeted expenditures were $242,000. The assessment rate of $0.00385 is $0.00035 higher than the rate currently in effect. Shipments of fresh citrus for the 1997–98 season are expected to be less than the Committee's initial estimate of 65,000,000 cartons. Estimated shipments for 1998–99 are 61,500,000 cartons, or 3,500,000 million cartons less than the 1997–98 estimate. Due to the reduced fresh shipments of Florida citrus to interstate and export markets, the Committee voted to increase the assessment rate to generate funds necessary to meet Committee operating expenditures, and maintain an adequate operating reserve.

The major expenditures recommended by the Committee for the 1998–99 year include $115,800 for salaries, $36,000 for Manifest Department-FDACS, $18,400 for insurance and bonds, and $12,325 for retirement plan. Budgeted expenses for these items in 1997–98 were $105,300, $36,000, $16,500, and $11,200, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Florida citrus. As mentioned earlier, citrus shipments for 1998–99 are estimated at 61,500,000 cartons which should provide $236,775 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses. Funds in the reserve (currently $109,371) would be kept within the maximum permitted by the order (approximately one-half of one fiscal period's expenses; § 905.42).

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

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 1998–99 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by the Department.

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

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

There are approximately 11,000 producers of citrus in the production area and approximately 109 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Florida citrus producers and handlers may be classified as small entities.

This rule would increase the assessment rate established for the Committee and collected from handlers

for the 1998–99 and subsequent fiscal periods from $0.0035 per 4/5 bushel carton to $0.00385 per 4/5 bushel carton handled. The Committee unanimously recommended 1998–99 expenditures of $242,275 and an assessment rate of $0.00385 per 4/5 bushel carton. The proposed assessment rate of $0.00385 per 4/5 bushel carton is $0.00035 higher than the 1997–98 rate. The quantity of assessable citrus for the 1998–99 season is estimated at 61,500,000. Thus, the $0.00385 rate should provide $236,775 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, would be adequate to meet this year's expenses.

The Committee estimates a reduced amount of fresh shipments of Florida citrus for the 1998–99 season. They unanimously recommended 1998–99 expenditures of $242,275 which included increases in staff salaries and benefits, and equipment rental. Due to the anticipated reduction of fresh shipments, the Committee voted to increase the assessment rate to generate the funds necessary to meet the Committee's operating expenses and maintain an adequate operating reserve. The Committee's authorized reserve (approximately one-half of one fiscal period's expenses) is currently $109,371. The revenue from assessments, along with interest income and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses.

The Committee reviewed and unanimously recommended 1998–99 expenditures of $242,275 which included increases in staff salaries and benefits, and equipment rental. Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Budget Sub-Committee. Alternative expenditure levels were discussed. However, it was determined that the increases in salaries, benefits, and equipment were needed and justified. The assessment rate of $0.00385 per 4/5 bushel carton of assessable Florida citrus was then determined by dividing the total recommended budget by the quantity of assessable citrus, estimated at 61,500,000 4/5 bushel cartons for the 1998–99 fiscal period. This is approximately $5,500 below the anticipated expenses. Assessment income, along with interest income and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses, which the Committee determined to be acceptable.

There are several varieties of citrus regulated under the order. In the 1997–98 season, the f.o.b. price ranged from around $5.83 to $6.71 for oranges, from around $5.26 to $6.31 for grapefruit, and from around $7.17 to $20.39 for speciality citrus. Depending on the volume and variety produced by the individual grower, the price for Florida citrus during the 1998–99 season is expected to range between $5.26 and $20.39 per 4/5 bushel carton. Therefore, the estimated assessment revenue for the 1998–99 fiscal period as a percentage of total grower revenue could range between 0.02 and 0.07 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Florida citrus industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 22, 1998, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

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

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1998–99 fiscal period begins on August 1, 1998, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable citrus handled during such fiscal period; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 905 is proposed to be amended as follows:

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

1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 905.235 is proposed to be revised to read as follows:

§ 905.235 Assessment rate.

On and after August 1, 1998, an assessment rate of $0.00385 per 4/5 bushel carton is established for assessable Florida citrus covered under the order.

Dated: July 10, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–18913 Filed 7–15–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 924

[Docket No. FV98–924–1 PR]

Fresh Prunes Grown in Designated Counties in Washington and Umatilla County, Oregon; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate established for the Washington-Oregon Fresh Prune Marketing Committee (Committee) under Marketing Order No. 924 for the 1998–99 and subsequent fiscal periods from $0.75 to $1.00 per ton of fresh prunes handled. The Committee is responsible for local administration of the marketing order which regulates the handling of fresh prunes grown in designated counties in Washington and Umatilla County, Oregon. Authorization to assess fresh prune handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The 1998–99 fiscal period began April 1 and ends

March 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by August 17, 1998.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax (202) 205–6632. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Room 369, Portland, OR 97204; telephone: (503) 326–2724, Fax: (503) 326–7440 or George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 690–3919, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 927, both as amended (7 CFR part 924), regulating the handling of fresh prunes grown in designated counties in Washington and Umatilla County, Oregon hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, fresh prune handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable fresh prunes beginning April 1, 1998, and continue until modified, suspended, or terminated. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule would increase the assessment rate established for the Committee for the 1998–99 and subsequent fiscal periods from $0.75 to $1.00 per ton of fresh prunes handled.

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

For the 1997–98 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate of $0.75 per ton that would continue in effect from fiscal period to fiscal period indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on June 3, 1998, and unanimously recommended 1998–99 expenditures of $7,003 and an assessment rate of $1.00 per ton of fresh prunes handled during the 1998–99 and subsequent fiscal periods. In comparison, last year's budgeted expenditures were $7,233. The assessment rate of $1.00 is $0.25 more than the rate currently in effect. The Committee recommended an increased assessment rate because the current rate would not generate enough income to adequately administer the program. The Committee decided that an assessment rate of more than $1.00 would generate income in excess of that needed to adequately administer the program.

Major expenses recommended by the Committee for the 1998–99 fiscal period include $2,880 for manager salary, $1,000 for travel, $528 for rent and maintenance, and $475 for audit. Budgeted expenses for these items in 1997–98 were $2,880, $1,000, $440, and $465, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of fresh prunes. Fresh prune shipments for the year are estimated at 4,800 tons, which should provide $4,800 in assessment income. Income derived from handler assessments, along with funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve (currently $6,709) would be kept within the maximum permitted by the order of approximately one fiscal period's operational expenses (§ 924.42).

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

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 1998–99 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by the Department.

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

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

There are approximately 350 producers of fresh prunes in the production area and approximately 30 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000 and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of fresh prune producers and handlers may be classified as small entities.

This rule would increase the assessment rate established for the Committee for the 1998–99 and subsequent fiscal periods from $0.75 to $1.00 per ton of fresh prunes handled. The Committee met on June 3, 1998, and unanimously recommended 1998–99 expenditures of $7,003 and an assessment rate of $1.00 per ton of fresh prunes handled. In comparison, last year's budgeted expenditures were $7,233. The assessment rate of $1.00 is $0.25 more than the rate currently in effect. The Committee recommended an increased assessment rate because the current rate would not generate enough income to adequately administer the program. The Committee decided that an assessment rate of more than $1.00 would generate income in excess of that needed to adequately administer the program.

Major expenses recommended by the Committee for the 1998–99 fiscal period include $2,880 for manager salary, $1,000 for travel, $528 for rent and maintenance, and $475 for audit. Budgeted expenses for these items in 1997–98 were $2,880, $1,000, $440, and $465, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of fresh prunes. Fresh prune shipments for the year are estimated at 4,800 tons, which should provide $4,800 in assessment income. Income derived from handler assessments, along with funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. The reserve is within the maximum permitted by the order of approximately one fiscal period's operational expenses (§ 924.42).

Recent price information indicates that the grower price for the 1998–99 marketing season will range between $200 and $500 per ton of fresh prunes handled. Therefore, the estimated assessment revenue for the 1998–99 fiscal period as a percentage of total grower revenue will range between 0.20 and 0.50 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the fresh prune industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 3, 1998, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

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

A 30-day comment period is provided to allow interested persons the opportunity to respond to this request for information and comments. Thirty days is deemed appropriate because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1998–99 fiscal period began on April 1, 1998, and the order requires that the rate of assessment for each fiscal period apply to all assessable fresh prunes handled during such fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 924

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 924 is proposed to be amended as follows:

PART 924—FRESH PRUNES GROWN IN DESIGNATED COUNTIES IN WASHINGTON AND UMATILLA COUNTY, OREGON

1. The authority citation for 7 CFR part 924 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 924.236 [Amended]

2. Section 924.236 is proposed to be amended by removing the words ''April 1, 1997,'' and adding in their place the words ''April 1, 1998,'' and by removing ''$0.75'' and adding in its place ''$1.00.''

Dated: July 10, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–18999 Filed 7–15–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–58–AD]

RIN 2120–AA64

Airworthiness Directives; SOCATA-Groupe Aerospatiale Model TBM 700 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain SOCATA-Groupe Aerospatiale (SOCATA) Model TBM 700 airplanes. The proposed AD would require modifying the oxygen generators. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified by the proposed AD are intended to prevent failure of the oxygen generators, which could result in crew incapacitation and loss of the airplane.

DATES: Comments must be received on or before August 20, 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–58–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 SOCATA Groupe Aerospatiale, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930—F65009 Tarbes Cedex, France; telephone (33) 5.62.41.76.52; facsimile (33) 5.62.41.76.54; or the Product Support Manager, SOCATA -Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone (954) 894–1160; facsimile: (954) 964–4191. This information also may be examined at the Rules Docket at the address above.

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

SUPPLEMENTARY INFORMATION:

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–58–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–58–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain SOCATA TBM 700 airplanes. The DGAC reports that operation of the oxygen generators failed on one of the affected airplanes. The oxygen generators are located under the passenger and crew seats and are pin-fired. Further investigation revealed that the firing pin was not lining up correctly and was not striking the generator in the right place to release oxygen into the cabin.

This condition, if not corrected, could result in failure of the oxygen generators, which could result in crew incapacitation and loss of the airplane.

Relevant Service Information

SOCATA has issued Mandatory Service Bulletin No. 70–046–35, dated May 1998, which specifies procedures for modifying the oxygen generator.

The DGAC classified this service bulletin as mandatory and issued French AD No. T98–195(A), dated June 3, 1998, in order to assure the continued airworthiness of these airplanes in France.

The FAA's Determination

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

The FAA has examined the findings of the DGAC; reviewed all available information, including the service information 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 SOCATA Model TBM 700 airplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require modifying the oxygen generator by replacing the firing pin and adding a washer. This modification should ensure that the firing pin stays aligned and strikes the oxygen generator in the correct manner. Accomplishment of the proposed modification would be in accordance with SOCATA Mandatory Service Bulletin No. 70–046–35, dated May 1998.

Cost Impact

The FAA estimates that 60 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 2 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts are available at minimal costs. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $7,200, or $120 per airplane.

Differences Between the French AD, the Service Bulletin, and This Proposed AD

French AD No. T98–195(A), dated June 3, 1998, and SOCATA Mandatory Service Bulletin No. 70–046–35, dated May 1998, both specify modifying the oxygen generator at the next scheduled maintenance inspection. The foreign AD and the service information differ in that the DGAC mandates that this action be accomplished no later than August 31, 1998, and the service bulletin specifies that the action be accomplished no later than 3 months from the date of the service bulletin. This proposed AD, if followed with a final rule, would require the modification be accomplished within 45 days after the effective date of the AD.

The modification required by the proposed AD does not differ from the DGAC AD or the SOCATA service bulletin.

Compliance Time of the Proposed AD

The compliance time of this proposed AD is presented in calendar time instead of hours time-in-service (TIS). The FAA has determined that a calendar time compliance is the most desirable method because the unsafe condition described by this proposed AD occurs regardless of the hours time-in-service. The oxygen generator failure could occur on any flight where it may be relied upon to provide the crew and passengers with oxygen. To ensure that the above-referenced condition is corrected on all of the affected airplanes within a reasonable period of time without inadvertently grounding any airplanes, the FAA is proposing a

compliance schedule based upon calendar time instead of hours TIS.

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:

Socata—Groupe Aerospatiale: Docket No. 98–CE–58–AD.

Applicability: Model TBM 700 airplanes, serial numbers 1 through 125, 127, 128, and 130 through 133, certificated in any category.

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

Compliance: Required within 45 days after the effective date of this AD, unless already accomplished.

To prevent failure of the oxygen generators, which could result in crew incapacitation and loss of the airplane, accomplish the following:

(a) Modify the oxygen generator by replacing the firing pin and adding a washer in accordance with the Accomplishment Instructions section of SOCATA Mandatory Service Bulletin No. 70–046–35, dated May 1998.

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

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by theManager, 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 SOCATA Mandatory Service Bulletin No. 70–046–35, dated May 1998, should be directed to SOCATA Groupe AEROSPATIALE, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930–F65009 Tarbes Cedex, France; telephone (33) 5.62.41.76.52; facsimile (33) 5.62.41.76.54; or the Product Support Manager, SOCATA—Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone (954) 894–1160; facsimile: (954) 964–4191. 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 French AD No. T98–195(A), dated June 3, 1998.

Issued in Kansas City, Missouri, on July 10, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–18940 Filed 7–15–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–176–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB 340B series airplanes. This proposal would require a one-time inspection for moisture or other contamination of a certain wiring harness, electrical relay, and relay socket; a one-time inspection for electrical damage of the same electrical relay and socket; corrective actions, if necessary; and replacement of certain nut plates with new, improved parts. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent a short circuit caused by fluid leakage, which could result in inability to extend or retract the landing gear.

DATES: Comments must be received by 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–176–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linkping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–176–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–176–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, notified the FAA that an unsafe condition may exist on certain Saab Model SAAB 340B series airplanes. The LFV advises that it has received a report indicating that circuit breaker 7GA opened while an airplane was in flight, which resulted in the flightcrew being unable to extend and lock down the landing gear. In another incident, circuit breaker 7GA opened shortly after takeoff of an airplane, which resulted in the flightcrew being unable to retract the landing gear. Investigation revealed that the design of nut plates installed on the cockpit floor allowed fluid to leak through carpet attachment holes on the floor. Such fluid leakage contaminated electrical relay 15GA, which is located directly below the nut plates, and caused a short circuit that caused circuit breaker 7GA to open. Fluid leakage also contaminated related wiring harnesses, which could cause the wiring insulation to break down and lead to a short circuit. This condition, if not corrected, could result in inability to extend or retract the landing gear, or possible collapse of the landing gear if it is not locked down properly upon landing.

Explanation of Relevant Service Information

The manufacturer has issued Saab Service Bulletin 340–32–115, dated April 7, 1998. This service bulletin describes procedures for a one-time detailed visual inspection for moisture or other contamination of a wiring harness above relay consoles 305VU and 306VU, and cleaning the wiring harness, if necessary. This service bulletin also describes procedures for a one-time detailed visual inspection for moisture or other contamination of electrical relay 15GA and its socket, which involves removing the relay from its socket; and corrective actions, if necessary. These corrective actions include removing the socket from the relay console, disconnecting the wires from the relay socket, and cleaning the relay socket and relay. This service bulletin also describes procedures for a one-time detailed visual inspection for electrical damage (i.e., arcing, discoloration, or charring) of electrical relay 15GA and its socket; and replacement of the relay and its socket with new parts, if necessary. The service bulletin also describes procedures for replacement of certain existing nut plates on the floor of the cockpit with new, improved parts. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The LFV classified this service bulletin as mandatory and issued Swedish airworthiness directive SAD 1–125, dated April 7, 1998, in order to assure the continued airworthiness of these airplanes in Sweden.

FAA's Conclusions

This airplane model is manufactured in Sweden 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 LFV has kept the FAA informed of the situation described above. The FAA has examined the findings of the LFV, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

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

Cost Impact

The FAA estimates that 120 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspections proposed by this AD on U.S. operators is estimated to be $7,200, or $60 per airplane.

It would take approximately 3 work hours per airplane to accomplish the proposed replacement, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the replacement proposed by this AD on U.S. operators is estimated to be $21,600, or $180 per airplane.

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

Regulatory Impact

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft

regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

SAAB Aircraft AB: Docket 98–NM–176–AD.

Applicability: Model SAAB 340B series airplanes, manufacturer serial numbers 380 through 499 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 a short circuit caused by fluid leakage, which could result in inability to extend or retract the landing gear, accomplish the following:

(a) Within 400 flight hours after the effective date of this AD, accomplish the actions required by paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this AD, in accordance with Saab Service Bulletin 340–32–115, dated April 7, 1998.

(1) Perform a detailed visual inspection to detect moisture or other contamination of the electrical wiring harness above relay consoles 305VU and 306VU. If any moisture or other contamination is found, prior to further flight, clean the wiring harness.

(2) Perform a detailed visual inspection to detect moisture or other contamination of electrical relay 15GA and its socket. If any moisture or other contamination is found, prior to further flight, accomplish corrective actions.

(3) Perform a detailed visual inspection for electrical damage of electrical relay 15GA and its socket. If any sign of electrical damage (arcing, discoloration, or charring) is detected, prior to further flight, replace the existing relay and socket with new parts.

(4) Replace the existing nut plates on the floor of the cockpit with new, improved nut plates, on the left and right sides of the airplane.

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

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

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

Note 3: The subject of this AD is addressed in Swedish airworthiness directive SAD 1–125, dated April 7, 1998.

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

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–18949 Filed 7–15–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010–AC09

Establishing Oil Value for Royalty Due on Federal Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Further supplementary proposed rule.

SUMMARY: The Minerals Management Service (MMS) is proposing additional changes to its second supplementary proposed rulemaking regarding the valuation of crude oil produced from Federal leases.

DATES: Comments must be submitted on or before July 24, 1998.

ADDRESSES: Mail comments, suggestions, or objections regarding the proposed rule to: Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165, e-mail address is RMP.comments@mms.gov.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Publications Staff, Royalty Management Program, Minerals Management Service, telephone (303) 231–3432, fax (303) 231–3385, e-mail RMP.comments@mms.gov.

SUPPLEMENTARY INFORMATION:

I. Background

MMS published an advance notice of its intent to amend the current Federal oil valuation regulations in 30 CFR parts 202 and 206 on December 20, 1995 (60 FR 65610). The purpose of this notice was to solicit comments on new methodologies to establish the royalty value of Federal (and Indian) crude oil production in view of the changes in the domestic petroleum market and particularly the market's move away from posted prices as an indicator of market value.

Based on comments received on the advance notice, together with information gained from a number of presentations by experts in the oil marketing business, MMS published its initial notice of proposed rulemaking on January 24, 1997 (62 FR 3742), applicable to Federal leases only. MMS held public meetings in Lakewood, Colorado, and Houston, Texas, to hear comments on the proposal.

In response to the variety of comments received on the initial proposal, MMS published a supplementary proposed rule on July 3, 1997 (62 FR 36030). This proposal expanded the eligibility requirements for valuing oil disposed of under arm's-length transactions.

Because of the substantial comments received on both proposals, MMS reopened the rulemaking to public comment on September 22, 1997 (62 FR 49460). MMS specifically requested comments on five valuation alternatives arising from the public comments. MMS held seven public workshops to discuss valuation alternatives.

As a result of comments received on the proposed alternatives and comments made at the public workshops, MMS published a second supplementary proposed rule on February 6, 1998 (63 FR 6113). The comment period for this second supplementary proposed rule was to close on March 23, 1998, but was extended to April 7, 1998 (63 FR 14057). MMS held five public workshops (63 FR 6887) on this second supplementary

proposed rule: in Houston, Texas, on February 18, 1998; Washington, D.C., on February 25, 1998; Lakewood, Colorado, on March 2, 1998; Bakersfield, California, on March 11, 1998; and Casper, Wyoming, on March 12, 1998.

By **Federal Register** notice dated July 8, 1998, (63 FR 36868) MMS reopened the comment period for the February 6, 1998, second supplementary proposed rule from July 9, 1998, until July 24, 1998, to receive further comment on the proposed rule. A meeting involving MMS, several industry representatives, and members of Congress was held in Washington, D.C., on July 9, 1998.

II. Revisions to Supplementary Proposed Rule

In response to comments received so far, MMS is proposing some changes to the February 6, 1998, second supplementary proposed rule. MMS is requesting public comments on these further proposed provisions.

Definition of ''Affiliate''

Several commenters to the February 6, 1998, second supplementary proposed rule objected to the proposed definition of ''affiliate'' in § 206.101. Under this proposed definition, 10 percent ownership was the threshold for defining control, requiring non-arm's-length valuation for transactions between persons with such a degree of affiliation. Commenters argued that 10 percent was too low because affiliates with this small amount of ownership actually have no control over the affiliated entity. Accordingly, they believed that too many lessees would be excluded from using their gross proceeds as value in bona fide arm's-length transactions. They suggested retaining the current definition of affiliate, as defined by the term ''arm's-length contract,'' where ownership of 10 percent through 50 percent creates a presumption of control. One commenter suggested 20 percent to 50 percent ownership as the criteria for creating a presumption of control, consistent with the definition used by the Bureau of Land Management. One commenter suggested deleting reference to partnerships and joint ventures because lessees might not have access to records of these entities and these terms could create confusion as to whether the affiliate test applies to the property, field, or corporate level.

MMS understands the concern raised in the industry comments regarding presumption of control. Therefore, MMS now is proposing to retain the current meaning of affiliate embodied in the current rules at proposed § 206.101. Less than 10 percent ownership would create a presumption of non-control. Ownership of between 10 and 50 percent would create a presumption of control that the lessee could rebut. Ownership in excess of 50 percent would establish control.

However, in the current rule, affiliation is defined within the definition of the term ''arm's length.'' In this proposed rule, although we have retained the current meaning of affiliation, we have made ''affiliate'' a separate definition from ''arm's length.'' We believe this clarifies and simplifies the definitions and should promote better understanding of both ''arm's length'' and ''affiliate.''

Breach of Duty to Market

Some commenters were concerned about the provision in proposed § 206.102(c)(2)(ii) which allows MMS to disallow arm's-length gross proceeds as royalty value if the lessee breaches its duty to market its oil for the mutual benefit of the lessee and lessor. The concern expressed was that MMS would use this provision to ''second-guess'' a lessee's marketing decision and thereby force the lessee to use index-based valuation.

The provision which is the subject of the commenters' concerns is identical to the provision in the existing rules (see 30 CFR § 206.102(b)(1)(iii)) and has been in the rules for more than 10 years. This provision has never been used to ''second-guess'' a lessee's marketing decisions to try to impose benchmarks of § 206.102(c) on arm's-length transactions. Nevertheless, MMS is also proposing to modify the proposed § 206.102(c)(2) to clarify that the lessee's duty to market does not mean that MMS will second-guess a company's marketing decisions. Lessees generally may structure their business arrangements however they wish, and absent misconduct, MMS will look to the ultimate arm's-length disposition in the open market as the best measure of value. The provision's purpose is to protect royalty value if, for example, a lessee were to inappropriately enter into a substantially below-market transaction for the purpose of reducing royalty.

Exchanges

The July 3, 1997, supplementary proposed rule extended the use of gross proceeds valuation to oil exchanged and then sold at arm's length. In those cases where a lessee disposed of the produced oil under an exchange agreement with a non-affiliated person, and after the exchange the lessee sold at arm's length the oil acquired in the exchange, the lessee would have had the option of using either its gross proceeds under the arm's-length sale or the index pricing method to value the lease production (proposed paragraph 206.102(a)(6)(i)). This option would have applied only when there was a single exchange. If the lessee chose gross proceeds under this option, the lessee would have valued all oil production disposed of under all other arm's-length exchange agreements in the same manner (proposed paragraph 206.102(a)(6)(iii)). For any oil exchanged or transferred to affiliates, or subject to multiple exchanges, the lessee would have used the index pricing method to value the lease production (proposed paragraph 206.102(a)(6)(ii)).

Participants in MMS's workshops held in October 1997 indicated that they often use several exchanges to transport their production from offshore leases to onshore market centers. They believed that MMS should give the lessee an option of valuing exchanged oil either by using so-called ''lease-market'' benchmarks (rather than index prices) or by using the lessee's resale price less an exchange differential, regardless of the number of exchanges needed to reposition the crude oil for sale.

In response to those comments, in the February 6, 1998, proposal, MMS expanded gross proceeds valuation to include situations where the oil received in exchange is ultimately sold arm's-length, regardless of the number of arm's-length exchanges involved. However, because of the numerous industry and State comments now claiming that tracing multiple exchanges would be overly burdensome, if not impossible, MMS is proposing to return to the July 3, 1997, proposal's ''first-exchange'' rule, where value will be determined based on the arm's-length sale after a single arm's-length exchange. MMS is proposing to modify § 206.102 (c)(3) so that if two or more exchanges are involved, even if they are all at arm's length, the lessee must use index pricing.

Gathering vs. Transportation

MMS received comments on the definition of ''gathering'' as contained in the existing regulations in 30 CFR 206.101, which is the same as in proposed § 206.101. The commenters noted that development, especially of deepwater leases, often involves a sub-sea completion with no platform. Bulk, unseparated production is moved sometimes in excess of 50 miles to a platform where it first surfaces and is treated. The commenters asserted that in these situations the movement of production from sub-sea production over long distances should be deductible as a transportation allowance. MMS specifically requests

comment on whether the definition of gathering should be modified to address this situation.

MMS requests comments on the revisions to the second supplementary proposed rule (63 FR 6113) including this notice or any other comments you may want to submit on this proposed rule. If you have commented already on other portions of the rule, you do not need to resubmit those comments since they are already part of the rulemaking record. MMS will respond to comments in the final rule.

List of Subjects in 30 CFR Part 206

Coal, Continental Shelf, Geothermal energy, Government contracts, Indians—lands, Mineral royalties, Natural gas, Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: July 14, 1998.

Sylvia V. Baca,

Acting Assistant Secretary, Land and Minerals Management.

For the reasons set forth in the preamble, the second supplementary proposed rule published at 63 FR 6113 on February 6, 1998, amending 30 CFR Part 206, is further amended as follows:

PART 206—PRODUCT VALUATION

1. The Authority citation for Part 206 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.* 1001 *et seq.* 1701 *et seq.*; 31 U.S.C. 9701, 43 U.S.C. 1301 *et seq.* 1331 *et seq.*, and 1801 *et seq.*

Subpart C—Federal Oil

2. Section 206.101 as proposed to be revised at 63 FR 6113 is further amended by revising the following definition to read as follows:

§ 206.101 Definitions

Affiliate means a person who controls, is controlled by, or is under common control with another person.

(1) For this subpart, based on ownership of an entity's voting securities, interest in a partnership or joint venture, or other forms of ownership:

(i) Ownership greater than 50 percent constitutes control;

(ii) Ownership of 10 through 50 percent creates a presumption of control; and

(iii) Ownership of less than 10 percent creates a presumption of noncontrol that MMS may rebut if it demonstrates actual or legal control, including but not limited to interlocking directorates.

(2) MMS may require the lessee to certify the percentage of ownership. Aside from the percentage ownership criteria, relatives, either by blood or marriage, are affiliates.

3. Section 206.102 as proposed to be revised at 63 FR 6113 is further amended by revising paragraphs (c)(2) and (c)(3) to read as follows:

§ 206.102 How do I calculate royalty value for oil that I or my affiliate sell under an arm's-length contract?

* * * * *

(c) * * *

(2) You must value the oil under § 206.103 if MMS determines that the value under paragraph (a) of this section does not reflect the reasonable value of the production due to either:

(i) Misconduct by or between the parties to the arm's-length contract; or

(ii) Breach of your duty to market the oil for the mutual benefit of yourself and the lessor. MMS will not use this provision to dispute lessees' marketing decisions made reasonably and in good faith. It will apply only when a lessee or its affiliate inappropriately sells its oil at a price substantially below market value.

(3) You must use § 206.103 to value oil disposed of under an exchange agreement. However, if you enter into a single arm's-length exchange agreement, and following that exchange you dispose of the oil received in the exchange in a transaction to which paragraph (a) of this section applies, then you must value the oil under paragraph (a) of this section. Adjust that value for any location or quality differential or other adjustments you received or paid under the arm's-length exchange agreement(s). But if MMS determines that any arm's-length exchange agreement does not reflect reasonable location or quality differentials, MMS may require you to value the oil under § 206.103. If you enter into more than one sequential exchange agreement to dispose of your production, you must use § 206.103 to value that production.

* * * * *

[FR Doc. 98–19135 Filed 7–15–98; 8:45 am]

BILLING CODE 4310–MR–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR PARTS 73 and 74

[MM Docket No. 98–98; FCC 98–130]

Call Sign Assignments for Broadcast Stations

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this *Notice of Proposed Rulemaking (NPRM),* the Federal Communications Commission proposes to modify its practices and procedures regarding the assignment of call signs for radio and television broadcast stations. Pursuant to these proposals, the Commission's existing manual procedures will be replaced by an on-line system for the electronic preparation and submission of requests for the reservation and authorization of new and modified call signs.

DATES: Comments are due on or before August 17, 1998, and reply comments are due on or before August 31, 1998. Written comments by the public on the proposed information collections are due August 17, 1998.

ADDRESSES: Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725–17th Street, N.W., Washington DC 20503, or via the Internet to fain__t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: James J. Brown or Jerianne Timmerman at (202) 418–1600. For additional information concerning the information collections contained in this *NPRM* contact Judy Boley at (202) 418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

Synopsis of Notice of Proposed Rulemaking

In this *Notice of Proposed Rulemaking (NPRM),* the Federal Communications Commission is proposing to modify its practices and procedures regarding the assignment of call signs to radio and television broadcast stations. Pursuant to this proposal, the Commission's existing manual procedures will be replaced by an on-line system for the electronic preparation and submission of requests for the reservation and authorization of new and modified call signs. Because the Commission believes that the new electronic call sign reservation and authorization system will significantly improve service to all radio and television broadcast station licensees and permittees, the *NPRM* requests

comment on whether licensees and permittees should be required to utilize the system to make call sign requests. However, as the Commission is sensitive to the possible inconveniences that mandatory use of the new electronic system could impose on certain licensees and permittees, the *NPRM* also seeks comment on whether use of the on-line system should be permissive, rather than mandatory, for certain licensees and permittees, or whether, if mandatory, the Commission should phase in such a requirement. The complete text of this *NPRM* is available for inspection and copying during normal business hours in the Federal Communications Commission Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and it may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036, (202) 857–3800.

Paperwork Reduction Act

This *NPRM* contains proposed information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law No. 104–13. It has been submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. The Commission, as part of its continuing effort to reduce paperwork burdens, invites OMB, the general public and other Federal agencies to comment on the proposed information collections contained in this *NPRM*, as required by the PRA. Public and agency comments are due at the same time as other comments on this *NPRM*; OMB comments are due 60 days from date of publication of this *NPRM* in the **Federal Register**. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden 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.

OMB Approval Number: 3060–0188.

Title: Call Sign Reservation and Authorization System.

Form No.: FCC 380.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit, Not-for-profit institutions, state, local or tribal government.

Number of Respondents: 1,400.

Estimated Time Per Response: 0.166 hours–0.25 hours.

Frequency of Response: On occasion reporting requirement.

Cost to Respondents: $108,500 (attorney fees).

Total Annual Burden: 291.

Needs and Uses: With the adoption of this *NPRM*, the Commission is proposing to modify its practices and procedures with regard to the assignment of call signs to radio and television broadcast stations by implementing an on-line call sign reservation and authorization system. The call sign reservation and authorization system would be used by permittees, licensees or persons acting on their behalf to determine the availability of a call sign and to request an initial call sign or change an existing call sign.

Initial Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act (RFA) (see 5 U.S.C. 603), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *NPRM*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments of the *NPRM*. The Office of Public Affairs, Reference Operations Division will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603(a).

2. *Need For and Objectives of the Proposed Rules.* With this *NPRM*, the Commission commences a proceeding to modify its procedures regarding the assignment of call signs for radio and television broadcast stations. By replacing its existing manual procedures with a new on-line system for the electronic preparation and submission of requests for new and modified call signs, the Commission will enhance the speed and certitude of radio and television broadcast station call sign assignments, while at the same time conserving Commission resources. The proposed implementation of the on-line call sign system will serve the Commission's goals of improving service to all broadcast stations licensees and permittees and maximizing efficiency in the use of Commission resources. This review is taken in conjunction with the Commission's 1998 biennial regulatory review. Although Congress did not mandate this area of review, the Commission nonetheless undertakes it to assure that its rules and processes are no more regulatory than necessary to achieve Commission goals.

3. *Legal Basis.* Authority for the actions proposed in this *NPRM* may be found in sections 4(i), 4(j) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j) and 303.

4. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. 601(6). The RFA, 5 U.S.C. 601(3), generally defines the term ''small business'' as having the same meaning as the term ''small business concern'' under the Small Business Act, 15 U.S.C. 632. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' [1]

5. The proposed rules and policies will apply to television broadcasting licensees and permittees and radio broadcasting licensees and permittees. The Small Business Administration defines a television broadcasting station that has no more than $10.5 million in annual receipts as a small business. Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.

[1] We tentatively believe that the SBA's definition of ''small business'' greatly overstates the number of radio and television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the proposals in this *NPRM* on small television and radio stations. For purposes of this *NPRM*, however, we will utilize the SBA's definition in determining the number of small businesses to which the proposed rules would apply. We reserve the right to adopt a more suitable definition of ''small business'' as applied to radio and television broadcast stations subject to the proposed rules in this *NPRM*, and to consider further in the future the issue of the number of radio and television broadcasters that are small entities.

Included in this industry are commercial, religious, educational, and other television stations. Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials. Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number. There were 1,509 television stations operating in the nation in 1992. That number has remained fairly steady as indicated by the approximately 1,569 operating television stations in the nation as of January 31, 1998. For 1992, the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments.

6. Additionally, the Small Business Administration defines a radio broadcasting station that has no more than $5 million in annual receipts as a small business. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. Included in this industry are commercial, religious, educational, and other radio stations. Radio broadcasting stations that primarily are engaged in radio broadcasting and that produce radio program materials are similarly included. However, radio stations that are separate establishments and are primarily engaged in producing radio program material are classified under another SIC number. The 1992 Census indicates that 96% (5,861 of 6,127) radio station establishments produced less than $5 million in revenue in 1992. Official Commission records indicate that 11,334 individual radio stations were operating in 1992. As of January 31, 1998, official Commission records indicate that 12,241 radio stations were operating, of which 7,488 were FM stations.

7. Thus, the proposed rules will affect many of the approximately 1,569 television stations, approximately 1,208 of which are considered small businesses. Additionally, the proposed rules will affect some of the 12,241 radio stations, approximately 11,751 of which are small businesses. These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television or non-radio affiliated companies.

8. *Description of Projected Recording, Recordkeeping, and Other Compliance Requirements.* The measures proposed in the *NPRM* would reduce the burdens on broadcast station licensees and permittees applying for or requesting a change in their station call signs. The proposal to replace the current manual call sign assignment process with an entirely electronic system would reduce the overall administrative burden upon both broadcast licensees and the Commission. Given the expected benefits of the new electronic system, we seek comment on whether to require all broadcast licensees and permittees to utilize the system to make call sign requests, and also seek comment as to whether to do so on a phased-in basis. We note that such a phased-in procedure has been used elsewhere with regard to electronic filing of applications so as to benefit small businesses. We believe that utilization of the new on-line system will, among other things, increase the speed and certitude of the call sign assignment process, conserve Commission resources, and aid licensees and permittees by informing them of errors in their call sign requests before they are actually sent. The measures proposed in the *NPRM* do not alter the Commission's current rules and policies regarding call signs (such as what constitutes a valid call sign), but modify the procedures by which call signs are assigned.

9. *Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered.* This *NPRM* solicits comments regarding the implementation of the Mass Media Bureau's new on-line call sign reservation system. Given the expected benefits of the new electronic system for both broadcast station licensees and the Commission, we seek comment on whether all broadcast licensees and permittees should be required to utilize the system for reserving call signs. We also ask for comment on other alternatives, including exempting certain licensees and permittees (such as small entities) from a requirement to use the electronic system or providing for a phase-in period before mandating use of the new system. Any significant alternatives presented in the comments will be considered.

10. *Federal Rules that Overlap, Duplicate, or Conflict with the Proposed Rules.* The initiatives and proposed rules raised in this proceeding do not overlap, duplicate or conflict with any other rules.

11. *Comments and Reply Comments.* Pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before August 17, 1998 and reply comments on or before August 31, 1998. To file formally in this proceeding, you must file an original plus six copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus eleven copies. You should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 – 17th Street, N.W., Washington, DC 20503 or via the Internet to fain__t@al.eop.gov.

12. *Ex parte Rules.* This proceeding will be treated as a ''permit-but-disclose'' proceeding subject to the ''permit-but-disclose'' requirements under section 1.1206(b) of the rules. *See* 47 CFR 1.1206(b), as revised. *Ex parte* presentations are permissible if disclosed in accordance with the Commission's rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two-sentence description of the views and arguments presented is generally required. *See* 47 CFR 1.1206(b)(2), as revised. Additional rules pertaining to oral and written presentations are set forth in section 1.1206(b).

13. Authority for issuance of this *NPRM* contained in sections 4(i), 4(j) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j) and 303.

List of Subjects in 47 CFR parts 73 and 74

Radio broadcasting, Reporting and recordkeeping requirements, Television broadcasting.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Proposed Rule Changes

For the reasons discussed in the preamble, parts 73 and 74 of Title 47 of

the Code of Federal Regulations are amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

2. Section 73.3550 is revised to read as follows:

§ 73.3550 Requests for new or modified call sign assignments.

(a) All requests for new or modified call sign assignments for radio and television broadcast stations shall be made via the FCC's on-line call sign reservation and authorization system accessible through the Internet's World Wide Web by specifying http://www.fcc.gov. Licensees and permittees may utilize this on-line system to determine the availability and licensing status of any call sign; to select an initial call sign for a new station; to change a station's currently assigned call sign; to modify an existing call sign by adding or deleting an ''-FM'' or ''-TV'' suffix; to exchange call signs with another licensee or permittee in the same service; or to reserve a different call sign for a station being transferred or assigned.

(b) No request for an initial call sign assignment will be accepted from a permittee for a new radio or full-service television station until the FCC has granted a construction permit. Each such permittee shall request the assignment of its station's initial call sign expeditiously following the grant of its construction permit. All initial construction permits for low power TV stations will be issued with a five-character low power TV call sign, in accordance with § 74.783(d).

(c) Following the filing of a transfer or assignment application, the proposed assignee/transferee may request a new call sign for the station whose license or construction permit is being transferred or assigned. No change in call sign assignment will be effective until such transfer or assignment application is granted by the FCC and notification of consummation of the transaction is received by the FCC.

(d) Where an application is granted by the FCC for transfer or assignment of the construction permit or license of a station whose existing call sign conforms to that of a commonly-owned station not part of the transaction, the new licensee of the transferred or assigned station shall expeditiously request a different call sign, unless consent to retain the conforming call sign has been obtained from the primary holder and from the licensee of any other station that may be using such conforming call sign.

(e) Call signs beginning with the letter ''K'' will not be assigned to stations located east of the Mississippi River, nor will call signs beginning with the letter ''W'' be assigned to stations located west of the Mississippi River.

(f) Only four-letter call signs (plus an LP suffix or FM or TV suffixes, if used) will be assigned.

However, subject to the other provisions of this section, a call sign of a station may be conformed to a commonly owned station holding a three-letter call sign assignment (plus FM, TV or LP suffixes, if used).

(g) Subject to the foregoing limitations, applicants may request call signs of their choice if the combination is available. Objections to the assignment of requested call signs will not be entertained at the FCC. However, this does not hamper any party from asserting such rights as it may have under private law in some other forum. Should it be determined by an appropriate forum that a station should not utilize a particular call sign, the initial assignment of a call sign will not serve as a bar to the making of a different assignment.

(h) Stations in different broadcast services (or operating jointly in the 535–1605 kHz band and in the 1605–1705 kHz band) which are under common control may request that their call signs be conformed by the assignment of the same basic call sign if that call sign is not being used by a non-commonly owned station. For the purposes of this paragraph, 50% or greater common ownership shall constitute a prima facie showing of common control.

(i) The provisions of this section shall not apply to International broadcast stations or to stations authorized under Part 74 of the rules (except as provided in § 74.783 of this chapter).

(j) A change in call sign assignment will be made effective on the date specified in the postcard acknowledging the assignment of the requested new call sign and authorizing the change. Unless the requested change in call sign assignment is subject to a pending transfer or assignment application, the requester is required to include in its on-line call sign request a specific effective date to take place within 45 days of the submission of its electronic call sign request. Postponement of the effective date will be granted only in response to a timely request and for only the most compelling reasons.

(k) Four-letter combinations commencing with ''W'' or ''K'' which are assigned as call signs to ships or to other radio services are not available for assignment to broadcast stations, with or without the ''-FM'' or ''-TV'' suffix.

(l) Users of nonlicensed, low-power devices operating under Part 15 of the FCC rules may use whatever identification is currently desired, so long as propriety is observed and no confusion results with a station for which the FCC issues a license.

(m) Where a requested call sign, without the ''-FM,'' ''-TV'' or ''-LP'' suffix, would conform to the call sign of any other non-commonly owned station(s) operating in a different service, an applicant utilizing the on-line reservation and authorization system will be required to certify that consent to use the secondary call sign has been obtained from the holder of the primary call sign.

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

3. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307, and 554.

4. Section 74.783 is amended by revising paragraph (e) to read as follows:

§ 74.783 Station identification.

* * * * *

(e) Low power TV permittees or licensees may request that they be assigned four-letter call signs in lieu of the five-character alpha-numeric call signs described in paragraph (d) of this section. Parties requesting four-letter call signs are to follow the procedures delineated in § 73.3550. Such four-letter call signs shall begin with K or W; stations west of the Mississippi River will be assigned an initial letter K and stations east of the Mississippi River will be assigned an initial letter W. The four-letter call sign will be followed by the suffix ''-LP.''

* * * * *

[FR Doc. 98–18887 Filed 7–15–98; 8:45 am]

BILLING CODE 6712–01–P

OFFICE OF PERSONNEL MANAGEMENT

48 CFR Parts 1609, 1632, 1652

RIN 3206–AI16

Federal Employees Health Benefits Program Improving Carrier Performance; Conforming Changes

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is proposing to issue a regulation that would amend the Federal Employees Health Benefits Acquisition Regulation (FEHBAR) to underscore accountability for customer service and contractual compliance among the Federal Employees Health Benefits (FEHB) Program community-rated carriers. The regulation would enable OPM to better manage carriers' performance over key contract areas, including customer service measures, information and reporting requirements, and significant events that might affect service to enrollees. Accurate and timely performance by carriers will facilitate the Program meeting its customer service standards.

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

ADDRESSES: Written comments may be sent to Abby L. Block, Chief, Insurance Policy and Information Division, Office of Insurance Programs, Retirement and Insurance Service, Office of Personnel Management, P.O. Box 57, Washington, DC 20044; delivered to OPM, Room 3425, 1900 E Street NW., Washington, DC; or FAX to (202) 606–0633.

FOR FURTHER INFORMATION CONTACT: Mary Ann Mercer, (202) 606–0004.

SUPPLEMENTARY INFORMATION: Among OPM's guiding principles in its role as administrator of the FEHB Program, and consistent with the Government's customer service initiatives, is the goal of ensuring high quality customer service for enrollees in the FEHB Program. In order to accomplish this goal, each carrier participating in the Program must meet its responsibility to provide high quality customer service.

OPM's customer service focus has led to our establishing certain Program requirements that will enable both OPM and carriers to provide enrollees with the quality of service they expect. These requirements are generally set by regulation, the FEHB contract, or OPM's administrative policies, and the vast majority of FEHB carriers comply with them. Nevertheless, sometimes FEHB carriers fall short of one or more of the requirements, for example, by failing to meet a specified standard for customer service or submitting a required report late or with incorrect information. A carrier's failure to meet its obligations reduces OPM's ability to ensure that the FEHB Program provides good customer service to FEHB enrollees, and may reduce the Program's efficiency and effectiveness. Accordingly, OPM seeks to implement a system of monetary performance incentives that would hold community-rated carriers accountable for their performance. Such incentives are already in place for experience-rated carriers.

OPM has identified certain carrier obligations that, when unmet, can delay or keep customer service goals from being met. Some examples of poor performance reducing customer service are: Failure to meet customer service standards; failure to provide accurate and timely benefits and rate information, brochures, or reports; failure to comply with the disputed claims process; failure to comply with the requirement for a paperless enrollment system, failure to accurately reconcile enrollment data; and failure to cooperate in survey administration. A carrier's failure to meet its obligations, particularly with regard to surveys and brochures, impedes or delays OPM's ability to provide enrollees with information that will enable them to make an informed decision in selecting a health plan. An additional critical obligation is the carrier's responsibility to provide information regarding events that might have a material effect upon the carrier's ability to meet its obligations under the contract, such as, changes to its participating providers, a change of corporate name or ownership or a transfer of assets, and labor disputes. These events may reduce the carrier's ability to provide required services to our enrollees.

Under authority of the regulations, OPM would withhold a portion of the community-rated carrier's premium if the carrier does not meet its FEHB Program obligations. It should be emphasized that we expect the vast majority of community-rated carriers will receive minor, if any, premium adjustment.

Incentive percentage factors will be assigned to two basic elements, Customer Service and Critical Contract Compliance Requirements, described below. The Contracting Officer will assign a percentage factor for each basic element based on the carrier's demonstrated record in meeting its obligations during the contract year. The percentage factor will be applied to each community-rated carrier's total FEHB premiums. The aggregate withhold amount for any carrier would not exceed one percent of premium paid for any contract year. OPM would evaluate the carrier's performance after the contract year ends, apply the percentage factors directly to the total net-to-carrier premium dollars paid for the preceding contract year, and withhold the amount from the carrier's periodic premium payments payable during the first quarter of the following contract year. Carriers could make alternative payment arrangements acceptable to their FEHB contracting officer.

So that there will be no question as to what level of effort OPM expects, we have developed a standard evaluation list with sub-elements that will be used by the FEHB contracting officers in evaluating the carriers' performance, and will share it with all community-rated carriers during the public comment period. An understanding of the elements and sub-elements should make it easier for carriers to achieve full performance under the contract and ensure that the FEHB Program maintains its position as a leader in meeting its customers' needs.

The regulation also amends FEHBAR 1632.170, Recurring payments to carriers, FEHBAR 1652.232–70, Payments-community-rated contracts, and FEHBAR 1652.232–71, Payments-experience-rated contracts, to enable OPM to withhold monies from premium payments for other contractual obligations, such as the carrier's share of the cost of a customer satisfaction survey.

Reference changes have been made to the FEHBP Clause Matrix at 1652.3 to conform to reference changes in the Federal Acquisition Regulation (FAR) [Chapter 1 of Title 48, Code of Federal Regulations] since the last FEHBP Clause Matrix update, and the reference to FAR 52.215–70 is corrected to read 1652.215–70.

Reduction of Comment Period for Proposed Rulemaking

I have determined that the comment period will be thirty days because OPM must receive public comments on this new initiative as soon as possible in order to analyze them, work with interested parties, and publish a final regulation prior to the beginning of the 1999 Contract Year.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because in no case will it affect more than one percent of a carrier's premium.

List of Subjects in 48 CFR Parts 1609, 1632, and 1652

Administrative practice and procedure, Government employees, Government procurement, Health facilities, Health insurance, Health professions, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is proposing to amend Chapter 16 of Title 48, Code of Federal Regulations, as follows:

CHAPTER 16—OFFICE OF PERSONNEL MANAGEMENT FEDERAL EMPLOYEES HEALTH BENEFITS ACQUISITION REGULATION

1. The authority citation for 48 CFR Parts 1609, 1632, and 1652 continue to read as follows:

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

PART 1609—CONTRACTOR QUALIFICATIONS

2. Subpart 1609.71 is added to read as follows:

Subpart 1609.71—Performance Incentives

Sec.

1609.7101 Policy.
1609.7101–1 Community-rated carrier incentive elements.
1609.7101–2 Community-rated carrier performance incentive factors.

Subpart 1609.71—Performance Incentives

1609.7101 Policy.

At the end of each contract period, the contracting officer shall determine each community-rated carrier's responsiveness to the Program requirements in 1609.7101–1.

1609.7101–1 Community-rated carrier incentive elements.

(a) Customer Service. This incentive element is intended to assist OPM in achieving the goal of providing customer service that meets or exceeds the expectations of Federal enrollees. The Customer Service element shall represent 70 percent of the total calculation and shall be based on the carrier's compliance with the following sub-elements:

(1) *Meeting Customer Service Performance Standards.* Compliance with this sub-element is essential so that OPM can ensure that the carrier is providing quality health care and other services to enrollees. The contracting officer will evaluate this sub-element based on the carrier's compliance with the *FEHB Quality Assurance* clause of the contract and shall consider the carrier's demonstrated efforts in responding to its members' needs, providing quality services, applying its quality assurance program, verifying that its physicians are credentialed, making appointments for patients, assessing the quality of its health care, accurately processing claims, properly responding to requests for reconsideration of disputed claims, and making timely payments to members and providers.

(2) *Timely Closure on Rates and Benefits Consistent with Policy Guidelines.* In order for information to be available to our customers in time for the annual Open Season, carriers must work with OPM to conclude benefits and rate negotiations by mid-August. The contracting officer will evaluate this sub-element based on the carrier's demonstrated record in providing its rate proposal, rate reconciliation data, and necessary clarifications within the time frames prescribed by and in the format required by OPM. The contracting officer also will evaluate this sub-element based on the carrier's record in submitting proposed benefit changes and clarifications and proposed brochure language in accordance with the instructions in the Call Letter.

(3) *Customer Information.* Enrollees must have accurate information and adequate time to make informed Open Season choices in selecting a health plan. In evaluating this sub-element, the contracting officer will consider the carrier's timely submission of the contract, signed by the contracting official, to OPM; the carrier's compliance with FEHBP Supplemental Literature Guidelines; the timeliness of the carrier's compliance with the *Information and Marketing Materials* clause of the contract and the carrier's efforts in submitting complete and accurate brochures to OPM's distribution center for annuitants, OPM contract specialists, and its current enrollees. The contracting officer shall also consider the timely submission of an electronic brochure for OPM's World Wide Web Site and the carrier's efforts in verifying, within the OPM-specified time frame, the accuracy of the information in the current FEHB Guide in preparation for the upcoming contract period as part of this requirement.

(4) *Cooperation in Surveys.* FEHB enrollees rely on feedback from the customer satisfaction survey in selecting a health plan. The contracting officer will evaluate this sub-element based on the carrier's record in cooperating with OPM and/or its designated representative in administering a customer satisfaction survey as specified in the FEHB contract and OPM guidance.

(5) *Reconsideration/Disputed Claims.* The requirement for carriers to reconsider disputed health benefits claims is in 5 CFR 890.105. An incomplete explanation of denied benefits by the carrier places a burden on enrollees, causing them to seek reconsideration because the carrier did not fully explain its denial. Incomplete responses to enrollee requests for reconsideration drive enrollees to take the additional step of requesting reconsideration by OPM. Late carrier responses to OPM's requests for the carrier's reconsideration file delays OPM's response to enrollees. When a dispute is brought to OPM through the disputed claims process, community-rated carriers must provide thorough and complete information according to OPM-specified time frames. The contracting officer will evaluate this sub-element based on the carrier's reconsideration files, including the responses to enrollees' requests for reconsideration and the carrier's submission of the reconsideration files to OPM for review of the carrier's decisions within the time frame specified by OPM.

(6) *Paperless Enrollment/Enrollment Reconciliation*—(i) *Paperless Enrollment.* The requirement to cooperate in the OPM designated system for paperless enrollment is under the section entitled ''Enrollment Instructions'' in the FEHB Supplemental Literature Guidelines in the FEHB contract. The contracting officer will evaluate this sub-element based on the carrier's efforts at setting up a method of accepting electronic data transmission from the OPM designated electronic enrollment system, processing enrollment changes on a weekly basis, and issuing ID cards timely. Consideration will also be given if the carrier does not accept enrollment verification letters provided through the electronic system as proof of insurance.

(ii) *Enrollment Reconciliation.* The requirement for carriers to reconcile their enrollment records on a quarterly basis with those provided by Federal Government agencies is in the *Records and Information to be Furnished by OPM* clause of the contract, as well as 5 CFR 890.110 and 5 CFR 890.308 (final regulations pending). The carrier's cooperation in the enrollment reconciliation process is essential so that OPM can determine the total premium payment to the carrier. The contracting officer will evaluate this sub-element based on the carrier's demonstrated record of complying with OPM guidance in reconciling enrollments and resolving enrollment discrepancies, as well as on the carrier's demonstrated record of following disenrollment procedures in accordance with 5 CFR 890.110 and 890.308 (final regulations pending).

(b) Critical Contract Compliance Requirements. This performance

incentive element shall represent 30 percent of the total computation and shall be based on the carrier's compliance with the following sub-elements:

(1) *Notification of Changes in Name or Ownership; or Transfer of Assets.* OPM must be able to assess the viability of the carrier and its ability to provide health care to enrollees so that they do not experience difficulty obtaining treatment and other services. The contracting officer will evaluate this sub-element based on the carrier's compliance with FEHBAR Subparts1642.12, Novation and Change-of-Name Agreements, and 1642.70, Management Agreement (in Lieu of Novation Agreement).

(2) *Notification of Other Significant Events.* The carrier must notify OPM of significant events such as lawsuits, strikes, and natural disasters so that OPM can assess the carrier's ability to pay claims and provide services to enrollees. In evaluating this sub-element, the contracting officer will consider the carrier's demonstrated record of compliance with 1652.222–70, including timely notification and explanation of all significant events that may have a material effect on the carrier's ability to perform the contract. Such events include, but are not limited to: Disposal of major assets; loss of 15% or more of its overall membership; addition or termination of provider agreements; and changes of participating plans.

(3) *Notification of Changes in Contract Administrators.* OPM must be able to reach the person responsible for managing the carrier's FEHB contract without delay when an enrollee calls OPM in need of urgent medical treatment, an ID card, or other service. Each carrier's designated contact will maintain telephone and electronic communications with OPM so that issues can be resolved quickly. The contracting officer will evaluate this sub-element based on the carrier's compliance with the *Notice* clause and *Contract Administration Data* sheet in the contract, and will consider the carrier's record in notifying OPM promptly of changes in its carrier Representative or contracting official, mailing or electronic address, telephone or FAX number.

(4) *Submission of Required Reports.* The reports specified in the *Statistics and Special Studies* and *FEHB Quality Assurance* clauses of the contract and are essential for tracking enrollment, finances, rates, etc. The contracting officer will base the carrier's performance in this sub-element on its demonstrated record in providing timely and accurate performance, demographics, fraud and abuse, debarment, and CPA reports, HEDIS and FACCT measures, and other reports as required by OPM within the OPM-specified time frames.

1609.7101–2 Community-rated carrier performance incentive factors.

OPM will apply the Customer Service and Critical Contract Compliance Requirements percentage factors specified by the contracting officer when a community-rated carrier does not provide the information, payment, or service, perform the function, or otherwise meet its obligations as stated in 1609.7101–1. The factors will be added and applied to the carrier's total premium dollars paid for the preceding contract period. The amount obtained after the total premium is multiplied by the factor will be withheld from the carrier's periodic premium payments payable during the first quarter of the following contract period, unless an alternative payment arrangement is made with the carrier's contracting officer.

The incentive factors for each basic element are set forth below:

COMMUNITY-RATED CARRIER PERFORMANCE INCENTIVE FACTORS

Element	Incentive factor (To be multiplied by premium and withheld from carrier's payments)
I. Customer Service (70% of Total)	.007
II. Critical Contract Compliance Requirements (30% of Total)	.003
Maximum Aggregate Percent of Premium	.01

PART 1632—CONTRACT FINANCING

3. In section 1632.170, paragraphs (a) and (b)(1) are revised to read as follows:

1632.170 Recurring premium payments to carriers.

(a)(1) *Recurring payments to carriers of community-rated plans.* OPM will pay to carriers of community-rated plans the premium payments received for the plan less the amounts credited to the contingency and administrative reserves, amounts assessed under paragraph (a)(2) of this section, and amounts due for other contractual obligations. Premiums will be due and payable not later than 30 days after receipt by the Employees Health Benefits (EHB) Fund.

(2) The sum of the two performance incentive factors applicable under 1609.7101–2 will be multiplied by the carrier's total net-to-carrier premium dollars paid for the preceding contract period. The amount obtained after the total premium is multiplied by the sum of the factors will be withheld from the carrier's periodic premium payment payable during the first quarter of the following contract period unless an alternative payment arrangement is made with the carrier's contracting officer. OPM will deposit the withheld funds in the carrier's contingency reserve for the plan. The aggregate amount withheld annually for performance for any carrier shall not exceed one percent of premium for any contract period.

(b)(1) *Recurring payments to carriers of experience-rated plans.* OPM will make payments on a letter of credit (LOC) basis. Premium payments received for the plan, less the amounts credited to the contingency and administrative reserves and amounts for other obligations due under the contract, will be made available for carrier drawdown not later than 30 days after receipt by the EHB Fund.

* * * * *

PART 1652—CONTRACT CLAUSES

4. The clause heading and paragraph (a) of the clause in section 1652.232–70 are revised to read as follows:

1652.232–70 Payments—community-rated contracts.

* * * * *

PAYMENTS (JAN 1999)

(a) OPM will pay to the Carrier, in full settlement of its obligations under this contract, subject to adjustment for error or fraud, the subscription charges received for the plan by the Employees Health Benefits Fund (hereinafter called the Fund) less the amounts set aside by OPM for the Contingency Reserve and for the administrative expenses of OPM, amounts assessed under 1609.7101–2, and amounts for other obligations due under the contract, plus any payments made by OPM from the Contingency Reserve.

* * * * *

5. In section 1652.232–71, the clause heading and paragraph (a) of the clause are revised to read as follows:

1652.232–71 Payments—experience-rated contracts.

* * * * *

PAYMENTS (JAN 1999)

(a) OPM will pay to the Carrier, in full settlement of its obligations under this contract, subject to adjustment for error or fraud, the subscription charges received for the Plan by the Employees Health Benefits

Fund (hereinafter called the Fund) less the amounts set aside by OPM for the Contingency Reserve and for the administrative expenses of OPM and amounts for other obligations due under the contract, plus any payments made by OPM from the Contingency Reserve.

* * * * *

1652.244–70 [Amended]

6. In section 1652.244–70, in paragraph (f) of the clause, the FAR reference ''15.903(d)'' is removed and the FAR reference ''15.404–4(c)(4)(i)'' is added in its place.

7. Section 1652.370 in the table in paragraph (c) the following clauses and Text references in the FEHBP Clause Matrix are revised as follows: FAR 52.215–22 and FAR 15.804–8(a) are revised to read 52.215–10 and 15.408(b) respectively; 52.215–24 and 15.804–8(c) are revised to read 52.215–12 and 15.408(d) respectively; 52.215–27 and 15.804–8(e) are revised to read 52.215–15 and 15.408(g) respectively; 52.215–30 and 15.904(a) are revised to read 52.215–16 and 15.408(h) respectively; 52.215–31 and 15.904(b) are revised to read 52.215–17 and 15.408(i) respectively; and 52.215–39 and 15.804–8(f) are revised to read 52.215–18 and 15.408(j) respectively; FAR 52.215–70 is revised to read 1652.215–70.

[FR Doc. 98–18967 Filed 7–15–98; 8:45 am]

BILLING CODE 6325–01–P

Notices

Federal Register
Vol. 63, No. 136
Thursday, July 16, 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

Agricultural Marketing Service

[TM–98–00–5]

The National Organic Standards Board Meeting: Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice; correction.

SUMMARY: The Agricultural Marketing Service (AMS) published a document in the **Federal Register** of July 10, 1998, concerning NOSB meeting. The document contained an incorrect time for the Public Input session on July 21, 1998.

FOR FURTHER INFORMATION CONTACT: Keith Jones, Program Manager, Room 2510 South Building, U.S. Department of Agriculture, AMS, Transportation and Marketing, National Organic Program Staff, P.O. Box 96456, Washington, D.C. 20090–6456. Phone (202) 720–3252.

Correction

In the **Federal Register** issue of July 10, 1998, in FR Doc. 98–18540; on page 37314, make the following corrections:

In the first column, under the **DATES** caption the times for July 21, 1998, should read 9:00 a.m. to 5:00 p.m.

In the second column, under the ''Type of Meeting'' caption the second sentence should read ''NOSB has scheduled time for public input on July 21, 1998, beginning at 9:00 a.m. and continuing until 12:00 p.m.''

Dated: July 13, 1998.

Eileen S. Stommes,

Deputy Administrator, Transportation and Marketing.

[FR Doc. 98–19077 Filed 7–14–98; 12:30 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Food Distribution Program: Value of Donated Foods From July 1, 1998 to June 30, 1999

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the value of donated foods or, where applicable, cash in lieu thereof to be provided in the 1999 school year for each lunch served by schools participating in the National School Lunch Program (NSLP) or by commodity only schools and for each lunch and supper served by institutions participating in the Child and Adult Care Food Program.

EFFECTIVE DATE: July 1, 1998.

FOR FURTHER INFORMATION CONTACT: Heddy Turpin, Acting Chief, Schools and Institutions Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302 or telephone (703) 305–2644.

SUPPLEMENTARY INFORMATION: These programs are listed in the Catalog of Federal Domestic Assistance under Nos. 10.550, 10.555, and 10.558 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983.)

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act. This notice has been determined to be exempt under Executive Order 12866.

National Average Minimum Value of Donated Foods for the Period July 1, 1998 through June 30, 1999

This notice implements mandatory provisions of sections 6(e), 14(f) and 17(h)(1)(B) of the National School Lunch Act (the Act) (42 U.S.C. 1755(e), 1762a(f), and 1766(h)(1)(B)). Section 6(e)(1)(A) of the Act establishes the national average value of donated food assistance to be given to States for each lunch served in NSLP at 11.00 cents per meal. Pursuant to section 6(e)(1)(B), this amount is subject to annual adjustments as of July 1 of each year to reflect changes in a three-month average value of the Price Index for Food Used in Schools and Institutions for March, April, and May each year. Section 17(h)(1)(B) of the Act provides that the same value of donated foods (or cash in lieu of donated foods) for school lunches shall also be established for lunches and suppers served in the Child and Adult Care Food Program. Notice is hereby given that the national average minimum value of donated foods, or cash in lieu thereof, per lunch under NSLP (7 CFR Part 210) and per lunch and supper under the Child and Adult Care Food Program (7 CFR Part 226) shall be 14.75 cents for the period July 1, 1998 through June 30, 1999.

The Price Index for Food Used in Schools and Institutions (Price Index) is computed using five major food components in the Bureau of Labor Statistics' Producer Price Index (cereal and bakery products; meats, poultry and fish; dairy products; processed fruits and vegetables; and fats and oils). Each component is weighed using the same relative weight as determined by the Bureau of Labor Statistics. The value of food assistance is adjusted each July 1 by the annual percentage change in a three-month average value of the Price Index for March, April and May each year. The three-month average of the Price Index decreased by 0.81 percent from 130.18 for March, April and May of 1997 to 129.12 for the same three months in 1998. When computed on the basis of unrounded data and rounded to the nearest one-quarter cent, the resulting national average for the period July 1, 1998 through June 30, 1999 will be 14.75 cents per meal. This is a decrease of 0.25 cents from the school year 1998 rate.

Section 14(f) of the Act provides that commodity only schools shall be eligible to receive donated foods equal in value to the sum of the national average value of donated foods established under section 6(e) of the Act and the national average payment established under section 4 of the Act (42 U.S.C. 1753). Such schools are eligible to receive up to 5 cents per meal

of this value in cash for processing and handling expenses related to the use of such commodities.

Commodity only schools are defined in section 12(d)(2) of the Act (42 U.S.C. 1760(d)(2)) as ''schools that do not participate in the school lunch program under this Act, but which receive commodities made available by the Secretary for use by such schools in nonprofit lunch programs.''

For the 1999 school year, commodity only schools shall be eligible to receive donated food assistance valued at 32.75 cents for each paid lunch served, and 33.50 cents for each free and reduced price lunch served. This amount is based on the sum of the section 6(e) level of assistance announced in this notice and the adjusted section 4 minimum national average payment factor for school year 1999. The section 4 factor for commodity only schools does not include the two cents per lunch increase for schools where 60 percent of the lunches served in the school lunch program in the second preceding school year were served free or at reduced prices, because that increase is applicable only to schools participating in the NSLP.

Authority: Sections 6(e)(1)(A) and (B), 14(f) and 17(h)(1)(B) of the National School Lunch Act, as amended (42 U.S.C. 1755(e)(1)(A) and (B), 1762a(f), and 1766(h)(1)(B)).

Dated: July 10, 1998.

George A. Braley,

Acting Administrator.

[FR Doc. 98–18974 Filed 7–15–98; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Squaw/Pole II Timber Sale, Boise National Forest, Gem County, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare Environmental Impact Statement.

SUMMARY: The Boise National Forest will prepare an Environmental Impact Statement (EIS) to document the analysis and disclose the environmental impacts of a proposed timber sale in the Second and Third Fork drainages on the Emmett Ranger District. The proposed timber sale lies within the Snowbank Inventoried Roadless Area (IRA).

Under this proposal, 313 acres of suitable timber land would be harvested, producing about 4.3 million board feet (MMBF) of sawtimber. A total of 188 acres would be harvested through shelterwood methods; 55 acres would be commercially thinned; 36 acres would be harvested through seed-tree methods; 20 acres would be harvested through sanitation salvage methods; and 14 acres would be clearcut. A total of 178 acres would be helicopter yarded; 125 acres would be tractor skidded; and 10 acres would be skyline yarded. A total of 188 acres would be planted. To facilitate natural regeneration and planting success, 120 acres would be underburned, and 20 acres would be mechanically scarified.

Stands to be treated would be accessed by existing roads. Included are two short road segments of 0.37 and 0.22 mile, respectively, constructed in the Snowbank IRA in the fall of 1997. This month (July 1998), these road segments will be treated to block vehicle access at the IRA boundary, using a combination of gates and earth barriers. The road surface will also be disked for about 100 feet behind the gate. Consequently, the proposed action would include removal of the earth barriers, and blading of the disked surface, to facilitate access for harvest activities.

DATES: Written comments concerning the scope of the analysis described in this notice should be received by August 17, 1998, to ensure timely consideration. No scoping meetings are planned at this time.

ADDRESSES: Send written comments to Morris Huffman, Emmett District Ranger, Boise National Forest, 1805 Highway 16, Emmett, ID 83716.

FOR FURTHER INFORMATION CONTACT: Questions concerning the proposed action and EIS should be directed to Morris Huffman at 208–365–7000.

SUPPLEMENTARY INFORMATION: In August 1995, Deputy Forest Supervisor Cathy Barbouletos made a decision to implement the Squaw/Pole timber sale in an area that encompassed about 5,500 acres on the Emmett Ranger District. The environmental assessment for the Squaw/Pole timber sale stated that no activities were planned for the Snowbank IRA as part of this project.

In the fall of 1997, it was discovered that incorrect maps had been used in the original analysis regarding the location of the IRA boundary, and that 313 acres of ground-based and helicopter harvest units had been located within the IRA, and 0.59 mile of new road had been constructed within the IRA. Because the roads within the IRA have already been constructed, they are considered part of the existing condition and will be analyzed as such; however, the no-action alternative will include obliteration of the road segments.

Based on this new information, the Boise National Forest determined the proposal may have a significant effect on the roadless resource and decided to prepare an EIS. The proposal may result in the reduction of approximately 885 acres of the Snowbank IRA from the National Forest System. The IRA currently encompasses 35,541 acres. Proposals that may substantially alter the undeveloped character of an IRA require the preparation of an EIS.

Initial analysis has identified one preliminary issue; namely, the effect of the proposal on the undeveloped character and wilderness attributes of the Snowbank IRA. Other potential issues may be identified during the current scoping period.

The Forest Service is seeking information and comments from Federal, State, and local agencies, as well as individuals and organizations who may be interested in, or affected by, the proposed action. The Forest Service invites written comments and suggestions on the issues related to the proposal and the area being analyzed.

Information received will be used in preparation of the draft EIS and final EIS. For the most effective use, comments should be submitted to the Forest Service within 30 days from the date of publication of this notice in the **Federal Register**.

The Responsible Official is David D. Rittenhouse, Forest Supervisor, Boise National Forest, Boise, Idaho. The decision to be made is whether to harvest and replant timber stands in the project area and, if so, how should these activities be carried out. The draft EIS is expected to be available for public review in November 1998, with a final EIS estimated to be completed in March 1999. The comment period on the draft EIS 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 EIS's 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 contention (*Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978)). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS 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 EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapter of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the draft EIS. 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 Part 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. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only 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 10 days.

Dated: July 8, 1998.

Allan B. McCombie,

Acting Forest Supervisor.

[FR Doc. 98–19002 Filed 7–15–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Designation Amendment for Michigan to Provide Official Services in the Lima (OH) Area

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: The designation of Michigan Grain Inspection Services, Inc., (Michigan), has been amended to include part of Ohio.

DATES: Effective on August 1, 1998.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, 1400 Independence Ave. S.W., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the April 1, 1998, **Federal Register** (63 FR 15827), GIPSA announced the designation of Michigan to provide official inspection services under the Act, effective May 1, 1998, and ending April 30, 2001. Subsequently, Michigan asked GIPSA to amend their geographic area to include part of Ohio, due to the purchase of the formerly designated corporation, Lima Grain Inspection Service, Inc. (Lima). Section 7A(c)(2) of the Act authorizes GIPSA's Administrator to designate an agency to perform official services within a specified geographic area, if such agency is qualified under Section 7(f)(1)(A) of the Act. GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act, and determined that Michigan is qualified. GIPSA is announcing the change in Michigan's assigned geographic area, and that Michigan is the officially designated service provider in the area of Ohio formerly assigned to Lima. The Michigan geographic area, in the States of Michigan and Ohio is:

Bounded on the North by the northern Michigan State line;

Bounded on the East by the eastern Michigan State line south and east to State Route 53; State Route 53 south to State Route 46; State Route 46 west to Sheridan Road; Sheridan Road south to Barnes Road; Barnes Road west to State Route 15; State Route 15 south to the Genesee County line; the northern Genesee County line west to the Shiawassee County line; the northern Shiawassee County line west to State Route 52; State Route 52 south to State Route 21; State Route 21 west to Clinton County; the eastern and northern Clinton County lines west to U.S. Route 27; U.S. Route 27 south to U.S. Route 127; U.S. Route 127 south to the Michigan-Ohio State line. In Ohio, the northern State line west to the Williams County line; the eastern Williams County line south to the Defiance County line; the northern and eastern Defiance County lines south to U.S. Route 24; U.S. Route 24 northeast to State Route 108; State Route 108 south to Putnam County; the northern and eastern Putnam County lines; the eastern Allen County line; the northern Hardin County line east to U.S. Route 68; U.S. Route 68 south to U.S. Route 47;

Bounded on the South by U.S. Route 47 west-southwest to Interstate 75 (excluding all of Sidney, Ohio); Interstate 75 south to the Shelby County line; the southern and western Shelby County lines; the southern Mercer County line; and

Bounded on the West by the Ohio-Indiana State line from the southern Mercer County line to the northern Williams County line; in Michigan, by the southern Michigan State line west to the Branch County line; the western Branch County line north to the Kalamazoo County line; the southern Kalamazoo and Van Buren County lines west to the Michigan State line; the western Michigan State line north to the northern Michigan State line.

Michigan's assigned geographic area does not include the following grain elevators inside Michigan's area which have been and will continue to be serviced by the following official agencies:

1. Detroit Grain Inspection Service, Inc.: St. Johns Coop., St. Johns, Clinton County, Michigan.

2. Northeast Indiana Grain Inspection: E.M. P. Grain, Payne, Paulding County, Ohio.

Effective August 1, 1998, Michigan's present geographic area is amended to include part of Ohio. Michigan's designation to provide official inspection services terminates April 30, 2001. Official services may be obtained by contacting Michigan at 616–781–2711.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: July 2, 1998.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 98–18961 Filed 7–15–98; 8:45 am]

BILLING CODE 3410–EN–P

COMMISSION ON CIVIL RIGHTS

Amended Notice of Public Meeting of the Delaware Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Delaware Advisory Committee to the Commission which was to have convened on July 23, 1998 has been rescheduled for July 28, 1998. This notice was originally published in the **Federal Register** on July 2, 1998, vol. 63, no. 124, FR 36212. This notice is change of day only.

Persons desiring additional information should contact Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 10, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–18944 Filed 7–13–98; 11:42 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Amended Notice of Public Meeting of the Maryland Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Maryland Advisory Committee to the Commission will convene at 9:30 a.m. and adjourn at 4:30 p.m. on July 23, 1998, at the Holiday Inn Inner Harbor, 301 West Lombard Street, Baltimore, Maryland 21201. This notice originally published in the **Federal Register** on June 29, 1998, vol. 63, no. 124, FR 35188. This notice is change of address and day only.

Persons desiring additional information should contact Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 10, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–18945 Filed 7–13–98; 11:42 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 37–98]

Foreign-Trade Zone 202, Los Angeles, CA; Proposed Foreign-Trade Subzone, Tosco Refining Company (Oil Refinery Complex); Los Angeles, CA Area

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Los Angeles Board of Harbor Commissioners, grantee of FTZ 202, requesting special-purpose subzone status for the oil refinery complex of Tosco Refining Company, located in the Los Angeles, California, area. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 8, 1998.

The refinery complex (727 acres) is located at 4 sites in the Los Angeles, area (Los Angeles County), California: *Site 1* (118,750 BPD capacity, 425 acres)—main refinery complex, located at 1660 West Anaheim Street, some 25 miles south of downtown Los Angeles; *Site 2* (96 tanks, 3.3 mil. barrel capacity, 235 acres)—storage facility used for crude oil and intermediate feedstocks, located at 1520 East Sepulveda Blvd., 5 miles northeast of the refinery; *Site 3* (26 tanks, 840,000 barrel capacity, 17 acres)—located within FTZ 202, *Site 1,* Los Angeles Harbor Marine Terminal at Berths 148, 149, 150, 151, 1 mile southeast of the refinery; *Site 4* (24 tanks, 2.1 million barrel capacity, 50 acres)—Torrance Tank Farm used for crude oil and finished product storage, located at 2650 West Lomita Blvd., approx. 4 miles northwest of the refinery.

The refinery (575 employees) is used to produce fuels and petrochemical feedstocks. Fuel products include gasoline, jet fuel, distillates, residual fuels, naphthas and motor fuel blendstocks. Petrochemical feedstocks and refinery by-products include methane, ethane, propane, propylene, butane, petroleum coke and sulfur. Some 10 percent of the crude oil (92 percent of inputs) and some motor fuel blendstocks are sourced abroad.

Zone procedures would exempt the refinery from Customs duty payments on the foreign products used in its exports. On domestic sales, the company would be able to choose the Customs duty rates that apply to certain petrochemical feedstocks and refinery by-products (duty-free) by admitting incoming foreign crude oil and natural gas condensate in non-privileged foreign status. The duty rates on inputs range from 5.25¢/barrel to 10.5¢/barrel. The application indicates that the savings from zone procedures would help improve the refinery's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 14, 1998.

Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to September 29, 1998.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, 11000 Wilshire Blvd., Room 9200, Los Angeles, California 90024

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: July 9, 1998.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–18880 Filed 7–15–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–801, A–475–801, A–401–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Germany, Italy, and Sweden; Amended Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final court decision and amended final results of administrative reviews.

SUMMARY: On May 7, 1998, the United States Court of Appeals for the Federal Circuit affirmed the United States Court of International Trade's affirmation of the Department of Commerce's final remand results affecting final assessment rates for the third administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from Germany, Italy, and Sweden with respect to SKF. The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof, cylindrical roller bearings and parts thereof, and spherical plain bearings and parts thereof. As there is now a final and conclusive court decision in these actions, we are amending our final results of reviews and we will instruct the U.S. Customs Service to liquidate entries subject to these reviews.

EFFECTIVE DATE: July 16, 1998.

FOR FURTHER INFORMATION CONTACT: Dave Dirstine or Richard Rimlinger, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4033 or (202) 482–4477.

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions in effect as of December 31, 1994. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations as codified at 19 CFR Part 353 (April 1, 1997).

SUPPLEMENTARY INFORMATION:

Background

On July 26, 1993, the Department published its final 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, Thailand, and the United Kingdom, covering the period May 1, 1991 through April 30, 1992 (AFBs III) (58 FR 39729). These final results were amended on August 9, 1993, September 30, 1993, December 15, 1993, February 28, 1994, and April 16, 1998 (see 58 FR 42288, 58 FR 51055, 58 FR 65576, 59 FR 9469, and 63 FR 18877, respectively). The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof (BBs), cylindrical roller bearings and parts thereof (CRBs), and spherical plain bearings and parts thereof (SPBs). Subsequently, two domestic producers, the Torrington Company and Federal-Mogul, and a number of other interested parties filed lawsuits with the U.S. Court of International Trade (CIT) challenging the final results. These lawsuits were litigated at the CIT and the United States Court of Appeals for the Federal Circuit (CAFC). On April 16, 1998, as a result of a final court decision, we issued amended final results for all firms whose dumping margins had changed as a result of litigation except for SKF GmbH (SKF Germany), SKF Industrie S.p.A. (SKF Italy), and SKF Sverige AB (SKF Sweden). *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.; Amended Final Results of Antidumping Duty Administrative Reviews* (63 FR 18877) (Amended Final Results). At that time, our determination of SKF Germany's, SKF Italy's, and SKF Sweden's dumping margins were still subject to outstanding litigation.

On May 7, 1998, the CAFC affirmed the CIT's decision in *Federal-Mogul Corp. v. United States,* 951 F. Supp. 1026 (*Federal-Mogul). The Torrington Company and Federal-Mogul Corporation* v. *United States,* 1998 U.S. App. LEXIS 12370 (May 7, 1998) (*Torrington*). The CIT's decision in *Federal-Mogul* affirmed the Department's remand results which were prepared pursuant to the CIT's earlier decision in *Federal-Mogul Corp.* v. *United States,* 918 F. Supp. 386 (1996), with respect to SKF Germany, SKF Italy, and SKF Sweden, among others, and dismissed the case. As a result of this and other litigation cited in our April 16, 1998, notice of Amended Final Results, we have made methodological changes and recalculated the dumping margins for SKF Germany, SKF Italy, and SKF Sweden. Specifically, the Department has, *inter alia,* (1) reconsidered its methodology for computing inventory carrying costs; (2) denied an adjustment to foreign market value (FMV) for home market (HM) pre-sale freight expenses where FMV was calculated using purchase price; (3) developed a methodology which removes post-sale price adjustments and rebates paid on sales of out-of-scope merchandise from its calculations of FMV or, if no viable method could be developed, denied such an adjustment in its calculation of FMV; and (4) corrected certain clerical errors.

As there is now a final and conclusive court decision with respect to SKF Germany, SKF Italy, and SKF Sweden, we are amending our final results of review for these companies and we will subsequently instruct the U.S. Customs Service to liquidate the relevant entries subject to these reviews.

Amendment to Final Results

Pursuant to section 516A(e) of the Act, we are now amending the final results of administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from Germany, Italy, and Sweden, for the period May 1, 1991, through April 30, 1992, with respect to SKF Germany, SKF Italy, and SKF Sweden. The revised weighted-average percentage margins are as follows:

Company	BBs	CRBs	SPBs
Germany			
SKF	17.66	8.66	8.98
Italy			
SKF	4.98	0.00	
Sweden			
SKF	7.77	4.80	

Accordingly, the Department will determine and the U.S. Customs Service will assess appropriate antidumping duties on entries of the subject merchandise produced by SKF Germany, SKF Italy, and SKF Sweden. Individual differences between United States price and foreign market value may vary from the percentages listed above. The Department will issue appraisement instructions to the U.S. Customs Service after publication of these amended final results of reviews.

This notice is published pursuant to section 751(a) of the Act.

Dated: July 2, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–18881 Filed 7–15–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–805]

Circular Welded Non-Alloy Steel Pipe and Tube From Mexico: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of antidumping duty administrative review.

SUMMARY: On June 17, 1998, the Department of Commerce (the Department) published the final results of its administrative review of the antidumping duty order on circular welded non-alloy steel pipe from Mexico covering exports of this merchandise to the United States by one manufacturer/exporter, Hylsa S.A. de C.V. (''Hylsa'') during the period November 1, 1995 through October 31, 1996. *See Circular Welded Non-Alloy Steel Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review*, 63 FR 33041. The Department has since determined that the published weighted-average dumping margin was incorrect and is therefore amending the final results of review for Hylsa.

EFFECTIVE DATE: July 16, 1998.

FOR FURTHER INFORMATION CONTACT: Ilissa Kabak at (202) 482–0145 or John Kugelman at (202) 482–0649, Enforcement Group III—Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

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 references to the Department's regulations are to 19 CFR Part 353 (April 1, 1997).

SUPPLEMENTARY INFORMATION:

Background

On June 17, the Department published the final results of its administrative review of the antidumping duty order on circular welded non-alloy steel pipe from Mexico covering exports of this merchandise to the United States by Hylsa during the period November 1, 1995 through October 31, 1996. This notice stated that the weighted-average dumping margin for Hylsa was 8.31 percent. After these final results were published, the Department determined that, as a result of a clerical error, the 8.31 percent figure included in that notice was incorrect. *See* Memorandum to the File, July 7, 1998 (Analysis Memo). The final results should have indicated that the weighted-average dumping margin for Hylsa is 7.39 percent.

Scope of the Review

The products covered by this order are circular welded non-alloy steel pipes and tubes, of circular cross-section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low pressure conveyance of water, steam, natural gas, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses, and generally meet ASTM A–53 specifications. Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and support members for reconstruction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and related industries. Unfinished conduit pipe is also included in these orders.

All carbon steel pipes and tubes within the physical description outlined above are included within the scope of this order, except line pipe, oil country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. Standard pipe that is dual or triple certified/stenciled that enters the U.S. as line pipe of a kind used for oil or gas pipelines is also not included in this order.

Imports of the products covered by this order are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90.

Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of these proceedings is dispositive.

The period of review (POR) is November 1, 1995 through October 31, 1996. This review covers sales of circular welded non-alloy steel pipe and tube by Hylsa.

Amended Final Results of Review

We determine that the correct weighted-average margin for Hylsa is 7.39 percent for the period November 1, 1995 through October 31, 1996.

The Department will determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Because Hylsa was the only importer during the POR, we have calculated the importer-specific per-unit duty assessment rate for the merchandise imported by Hylsa by dividing the total amount of antidumping duties calculated during the POR by the total quantity entered during the POR. Individual differences between U.S. price and normal value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of amended final results of review for all shipments of circular welded non-alloy steel pipe from Mexico entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by § 751(a)(1) of the Act: (1) The amended cash deposit rate for Hylsa will be the rate stated above; (2) if the exporter is not a firm covered in this review, a prior review, or the original 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; (3) 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; (4) the cash deposit rate for all other manufacturers or exporters will continue to be the ''all others'' rate of 32.62 percent.[1] *See Notice of Antidumping Orders: Certain Circular Welded Non-Alloy Steel Pipe from*

[1] The preliminary results of this administrative review incorrectly stated that the ''all others'' rate was 36.62 percent. *Preliminary Results* at 62 FR 64568.

Brazil, the Republic of Korea (Korea), Mexico, and Venezuela, and Amendment to Final Determination of Sales at Less Than Fair Value: Certain Circular Welded Non-Alloy Steel Pipe from Korea, 57 FR 49453 (November 2, 1992). These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR § 353.26 of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR § 353.34(d)(1) of the Department's regulations. Timely notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These amended final results of administrative review and notice are in accordance with § 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR § 353.28.

Dated: July 8, 1998.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–18883 Filed 7–15–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818]

Certain Pasta From Italy; Notice of Extension of Time Limit for New Shipper Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 16, 1998.

FOR FURTHER INFORMATION CONTACT: John Brinkmann or Edward Easton, Office of AD/CVD Enforcement II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue N.W., Washington, DC 20230; telephone (202) 482–5288 or 482–1777, respectively.

SUPPLEMENTARY INFORMATION: On March 4, 1998, the Department of Commerce (the Department) initiated a new shipper review relating to the antidumping duty order on certain pasta from Italy, covering the period July 1, 1997, through December 31, 1997 (63 FR 10590). Therefore, the current deadline for the preliminary results of this new shipper review is August 31, 1998. Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 180 days after the date on which the new shipper review was initiated. However, when the Department determines a case is extraordinarily complicated, it may extend the 180-day period to 300 days, 19 CFR 351.214(i)(2), (62 FR 27296, 27396 (1997)).

Pursuant to section 751(a)(2)(B)(iv) of the Act, the Department has determined that this case is extraordinarily complicated given the complex nature of the issues involved in the concurrent administrative review of this proceeding and activities connected with the judicial remand of the Department's final determination in the investigation of Certain Pasta from Italy. See *Borden, Inc.* v. *US*, Slip Op. 98–36 (March 26, 1998). Thus, in accordance with the statutory and regulatory authority cited above, the Department is extending the deadline for issuing the preliminary results of this new shipper review by 30 days to no later than September 30, 1998. We plan to issue the final results within 90 days after the date the preliminary results are issued.

This extension is in accordance with section 751(a)(2)(B)(iv) of the Act.

Dated: July 9, 1998.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–18885 Filed 7–15–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–807]

Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea; Initiation of New Shipper Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of New Shipper Antidumping Duty Administrative Reviews.

SUMMARY: The Department of Commerce has received requests for new shipper reviews of the antidumping duty order on polyethylene terephthalate film, sheet, and strip (PET film) from the Republic of Korea issued on June 5, 1991. In accordance with our regulations, we are initiating new shipper reviews covering Kohap, Ltd. (Kohap) and H.S. Industries Co., Ltd. (HSI).

EFFECTIVE DATE: July 16, 1998.

FOR FURTHER INFORMATION CONTACT: Michael J, Heaney or John Kugelman, AD/CVD Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–4475 or 0649, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all references to the Department's regulations are to 19 CFR part 351 (62 FR 27295, May 19, 1997).

Background

The Department received a timely request, in accordance with section 751(a)(2)(B) of the Tariff Act and 19 CFR 351.214(b) of the Department's regulations, for a new shipper review of the antidumping duty order on PET film from Korea, which has a June anniversary date. (*See* Antidumping Duty Order and Amendment to Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea, 56 FR 25669 (June 5, 1991).)

Initiation of Review

Pursuant to the Department's regulations at 19 (CFR 351.214(b), Kohap and HRI certified in their June 30, 1998 submissions that they did not export merchandise to the United States during the period of the investigation (POI) (November 1, 1989 through April 30, 1990), and that they were not affiliated with any exporter or producer of the subject merchandise to the United States during the POI. Kohap and HRI submitted documentation establishing the date on which the merchandise was first entered for consumption in the United States.

In accordance with section 751(a)(2)(B) of the Tariff Act and section 351.214(d) of the Department's regulations, we are initiating new shipper reviews of Kohap and HRI for the antidumping duty order on PET film from the Republic of Korea. These reviews cover the period June 1, 1997 through May 31, 1998. We intend to issue the final results of the review no later than 270 days from the date of publication of this notice.

We will instruct the Customs Service to allow, at the option of the importer, the posting, until completion of the review, of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by Kohap and HRI, in accordance with 19 CFR 351.214(e).

Interested parties may submit applications for disclosure under administrative protective order in accordance with 19 CFR 353.305(b).

This initiation and this notice are in accordance with section 751(a) of the Tariff Act (19 U.S.C. 1675(a)) and section 351.214 of the Department's regulations (19 CFR 351.214).

Dated: July 10, 1998.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 98–19018 Filed 7–15–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–824]

Polyvinyl Alcohol From Taiwan: Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Amended Final Results of the Administrative Review of the Antidumping Duty Order on Polyvinyl Alcohol from Taiwan.

SUMMARY: On June 16, 1998, the Department of Commerce published the final results in this administrative review (63 FR 32810). Subsequent to the publication of the final results, we received timely comments from E.I. du Pont de Nemours & Co. alleging a ministerial error. After analyzing the comments submitted, we agree and are amending our final results to correct this ministerial error. This amendment to the final results is published in accordance with 19 CFR 353.28(c) (April 1997).

EFFECTIVE DATE: July 16, 1998.

FOR FURTHER INFORMATION CONTACT: Brian Smith at (202) 482–1766, or Everett Kelly at (202) 482–4194, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230.

APPLICABLE STATUTE AND REGULATIONS: Unless otherwise indicated, all citations to the Tariff Act of 1930 (''the Act''), as amended, 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''). Additionally, unless otherwise indicated all citations to the Department's regulations are to 19 CFR Part 353 (April 1997).

SUPPLEMENTARY INFORMATION:

Background

On June 16, 1998, the Department of Commerce (''the Department'') published in the **Federal Register** the final results of the administrative review of the antidumping duty order covering the period of May 15, 1996, through April 30, 1997, on polyvinyl alcohol from Taiwan. *See, Polyvinyl Alcohol from Taiwan: Final Results of Antidumping Duty Administrative Review,* 63 FR 32810. Subsequently, on June 18, 1998, respondent E.I. du Pont de Nemours & Co. (''DuPont'') submitted a ministerial error allegation. The petitioner, Air Products and Chemicals, Inc., did not submit comments concerning DuPont's clerical error allegation.

A summary of the allegation along with the Department's response is discussed below. We are hereby amending our final results, pursuant to Section 751(h) of the Act and 19 CFR 353.28(c), to reflect the correction of the error which is clerical in nature.

Scope of Review

The product covered by this review is polyvinyl alcohol (''PVA''). PVA is a dry, white to cream-colored, water-soluble synthetic polymer. Excluded from this review are PVAs covalently bonded with acetoacetylate, carboxylic acid, or sulfonic acid uniformly present on all polymer chains in a concentration equal to or greater than two mole percent, and PVAs covalently bonded with silane uniformly present on all polymer chains in a concentration equal to or greater than one-tenth of one mole percent. PVA in fiber form is not included in the scope of this review.

The merchandise under review is currently classifiable under subheading 3905.30.00 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope is dispositive.

Amended Final Results of Review

DuPont alleges that the Department made a ministerial error in calculating constructed export price (''CEP'') for its sales of further manufactured PVA. DuPont claims that the alleged ministerial error occurred during the process wherein the Department, after the preliminary results were published, changed the way it calculated CEP for DuPont's sales of further manufactured PVA. In the preliminary results, DuPont states, the Department calculated CEP the same way for sales of imported PVA as it did for sales of further manufactured PVA. In the preliminary results, we calculated CEP for sales of further manufactured PVA by deducting from the starting price discounts and rebates, movement expenses, and direct and indirect selling expenses associated with DuPont's economic activities occurring in the United States. We also deducted an amount for profit and further manufacturing costs (*see Calculation Memorandum for the Preliminary Results for E.I. duPont de Nemours & Co.,* dated February 2, 1998).

In its case brief, the petitioner contended that our computer program failed to find comparable matches for PVA sold by DuPont in the United States and Australia because of the omission of a critical conversion factor. The petitioner indicated that since the further manufactured product is comprised of only a fraction of the imported PVA, the amount reported in DuPont's variable manufacturing costs for sales of further manufactured merchandise represented the costs for only that fraction of subject merchandise. Accordingly, the petitioner argued that the Department should adjust the reported variable manufacturing costs for U.S. sales of further manufactured merchandise by

stating the per-unit costs on the same basis as the variable manufacturing costs of the Australian sales (*see Case Brief on behalf of Petitioner Air Products and Chemicals, Inc.* at page 19). DuPont did not object to the petitioner's comment.

Because further manufactured PVA comprises only a percentage of subject merchandise, we agreed with the petitioner that the prices, costs and expenses involved in the further manufactured product should be based on the same percentage of subject merchandise incorporated in the further manufactured sales at issue. Accordingly, in the final results, we adjusted the reported amounts of variable and total manufacturing costs, gross unit price, and CEP selling expenses for further manufactured PVA by a conversion factor (*i.e.*, the value-added ratios reported in DuPont's Section E submission) in order to state the prices, costs, and expenses of further manufactured PVA on a per-unit basis (USD/lb) of imported PVA (*see Calculation Memorandum for the Final Results for E.I. duPont de Nemours & Co.*, dated June 9, 1998).

While DuPont agrees that the Department was correct in altering its preliminary calculation of the CEP sales at issue, DuPont claims that because the further manufactured PVA comprises only a percentage of subject merchandise, the quantity involved in the further manufactured product should also have been adjusted to reflect the same percentage of subject merchandise incorporated in the further manufactured sales at issue. Instead, DuPont asserts that for the final results, rather than adjust the quantity to reflect the actual amount of PVA used, the Department converted prices from units of dollars per kilogram of further manufactured PVA to dollars per kilogram of imported PVA by dividing the unit prices of further manufactured PVA by the above-mentioned value-added ratios (*see Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 60 FR 42835, 42845 (August 17, 1995)(where the Department made the same type of adjustment to CEP calculation for sales of further manufactured merchandise). Thus, DuPont contends, the effect of multiplying these converted prices (in dollars per kilogram of the imported PVA) by the total quantity of further manufactured PVA was a significant overstatement of the quantity of merchandise subject to antidumping duties (*i.e.*, subject merchandise) and, therefore, the amount of dumping. Thus, DuPont claims that the Department should make this adjustment to the reported quantity for its sales of further manufactured products.

We agree that a ministerial error was made in our margin calculation as alleged by DuPont. Without adjusting the reported quantity for DuPont's sales of further manufactured PVA to reflect the amount of subject merchandise actually used in the further manufactured sales, we incorrectly multiplied the value of imported PVA by the quantity of further manufactured PVA when we should have used the percentage of subject merchandise incorporated in the further manufactured PVA. For a detailed discussion, *see Memorandum to Louis Apple, Office Director, from Team*, dated July 6, 1998. *See also, Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Amendment of Final Results of Antidumping Duty Administrative Review*, 63 FR 2200 (January 14, 1998), in which the Department amended its final results due to a ministerial error in calculating interest expense, which resulted in an overstatement of the interest expense factor and, consequently, of the dumping margin.

Accordingly, we are amending our final results. We hereby determine the following weighted-average margin existed for the period May 15, 1996, through April 30, 1997:

Manufacturer/producer/exporter	Original margin (percent)	Revised margin (percent)
E.I. duPont de Nemours & Co.	9.46	4.20

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated an importer-specific duty assessment rate based on the ratio of the total amount of AD duties calculated for the examined transactions in the POR to the total entered value of the same transactions. This rate will be assessed uniformly on all entries of that particular importer made during the POR. The Department will issue appraisement instructions concerning the respondent directly to the U.S. Customs Service.

The amended cash deposit requirement will be effective upon publication of this notice of amended final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act, at the cash deposit rate for DuPont indicated above.

This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

The amended final results of this administrative review are in accordance with section 751(h) of the Act and 19 CFR 353.28. This amendment to the final results is published in accordance with 19 CFR 353.28(c).

Dated: July 9, 1998.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–18886 Filed 7–15–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–504]

Porcelain-on-Steel Cookware From Mexico: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On January 9, 1998, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on certain porcelain-on-steel cookware from Mexico (63 FR 1430). The review, the tenth review of the underlying order, covers Cinsa, S.A. de C.V. and Esmaltaciones de Norte America, S.A. de C.V., manufacturers/exporters of the subject merchandise to the United States and the period December 1, 1995, through November 30, 1996. We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received and the correction of certain clerical and computer program errors, we have changed the preliminary results. The final results are listed below in the section ''Final Results of Review.''

EFFECTIVE DATE: July 16, 1998.

FOR FURTHER INFORMATION CONTACT: Kate Johnson or David J. Goldberger, Office 5, AD/CVD Enforcement Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone:

(202) 482–4929 or (202) 482–4136, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 9, 1998, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of the 1995–96 administrative review of the antidumping duty order on certain porcelain-on-steel (POS) cookware from Mexico (63 FR 1430) (*preliminary results*). During February 3–4, 1998, the Department verified the respondents' submissions concerning the allegation of duty reimbursement. On February 25, 1998, and March 4, 1998, General Housewares Corp. (GHC) (the petitioner) and, Cinsa, S.A. de C.V. (Cinsa) and Esmaltaciones de Norte America, S.A. de C.V. (ENASA) submitted case and rebuttal briefs. The Department held a hearing on March 11, 1998. On April 9, 1998, Columbian Home Products, LLC (CHP) informed the Department that it is the legal successor-in-interest to GHC pursuant to the March 31, 1998, sale of all of GHC's porcelain-on-steel cookware production assets, product lines, inventory, real estate, and brand names to CHP. The Department has now completed its administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the provisions codified at 19 CFR Part 353 (April 1997). Where we cite the Department's new regulations (19 CFR Part 351, 62 FR 27926 (May 19, 1997) (New Regulations)) as an indication of current Department practice, we have so stated.

Scope of the Review

Imports covered by this review are shipments of porcelain-on-steel cookware, including tea kettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. This merchandise is currently classifiable under *Harmonized Tariff Schedule of the United States* (HTSUS) subheading 7323.94.00. Kitchenware currently classifiable under HTSUS subheading 7323.94.00.30 is not subject to the order. Although the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this proceeding is dispositive.

Changes Since the Preliminary Results

We have made the following changes in these final results for both Cinsa and ENASA:

1. We deducted commissions from constructed export price (CEP) sales. The adjustment for commission expenses was inadvertently omitted from the preliminary margin calculations.
2. We converted Mexican peso-denominated brokerage and inland freight expenses to U.S. dollars.
3. We corrected the U.S. price calculation for export price (EP) sales by not deducting CEP profit and selling expenses, which were inadvertently deducted in the preliminary results.
4. We increased direct materials costs to reflect adjustments to reported frit costs based on verification findings. *See* Comment 2, below.
5. We used the Federal Reserve Bank's actual daily exchange rates for currency conversion purposes because Mexico experienced significant inflation during the period of review.
6. We recalculated CIC's indirect selling expenses. *See* Comments 4 and 9, below.
7. We tested home market sales for below-cost prices *before* determining the most appropriate match for each U.S. model sold (we continued to match on a monthly basis). *See* Comment 6, below.
8. We corrected a clerical error in calculating U.S. inland freight expenses. *See* Comment 8, below.
9. We corrected a computer programming error associated with the cost test because some data were incorrectly replaced from the computer sales file when the summary cost file was merged back into the home market database.
10. We applied the cost test on a period-wide as opposed to a monthly basis.

Interested Party Comments

Comment 1: Alleged Reimbursement of U.S. Affiliate CIC for Antidumping Duties

The petitioner argues that the record of this review clearly demonstrates that Cinsa and ENASA are reimbursing Cinsa's and ENASA's U.S. affiliate, Cinsa International Corporation (CIC), for antidumping duties. The petitioner states that Cinsa and ENASA admit on the record that their affiliated holding company, Grupo Industrial Saltillo (GIS), which functions as corporate treasurer, transferred funds to CIC expressly to pay antidumping duties. In addition, the petitioner states that the Department confirmed that the holding company's payment to CIC was a grant and not a loan because CIC was not required to repay these funds.

The petitioner further argues that the Department's preliminary results ignore long-standing principles that (1) money is fungible within a corporate family, and (2) expenses incurred by holding companies without operations are for the benefit of their affiliates with operations. Moreover, the petitioner states that the Department verified that the funds transferred to CIC contained monies to which Cinsa and ENASA contributed. Accordingly, the petitioner argues that the Department should find reimbursement of antidumping duties based on these facts and assess double the calculated antidumping margin upon liquidation of the entries subject to this review, pursuant to 19 CFR 353.26(a).

The respondents argue that, for purposes of the final results, the Department should continue to reject the proposition that a capital contribution to the importer of record by a corporate entity that is not the producer or exporter of the subject merchandise constitutes a reimbursement of antidumping duties within the meaning of the Department's regulations. Cinsa and ENASA contend that the Department's regulations require that, in order to trigger the reimbursement provision, the producer or reseller must have either (1) directly paid antidumping duties or deposits on behalf of the importer, or (2) reimbursed the importer for the payment of antidumping duties or deposits. In addition, Cinsa and ENASA argue that the Department verified that neither respondent reimbursed CIC for its payment of antidumping duty deposits or assessments to the U.S. Customs Service. Moreover, the respondents argue that the Department also verified that no written agreement exists for the reimbursement of antidumping duties between CIC and Cinsa or ENASA and that the funds transferred to CIC from GIS and GISSA Holding USA did not originate from Cinsa and ENASA.

Furthermore, the respondents contend that the Department has consistently held that the mere existence of intercompany transfers of funds among affiliated parties does not constitute reimbursement of antidumping duties. Lastly, Cinsa and ENASA submit that the cases cited by the petitioner with regard to the principle of the ''fungibility of money'' relate to the calculation of cost of production (COP)

and are not relevant to the issue of reimbursement.

DOC Position

We do not believe that it is appropriate to apply the reimbursement regulation for purposes of this administrative review. Pursuant to its regulations, the Department will deduct from export price ''the amount of any antidumping duty which the producer or reseller: (1) Paid directly on behalf of the importer; or (2) reimbursed to the importer.'' 19 CFR 353.26(a).

The Department verified during the instant review and previous administrative review periods that CIC or its predecessor company, Global Imports, Inc. (Global), paid all antidumping duty deposits and antidumping duty assessments. The petitioner's claim for a deduction rests on the April 1997 capital contribution by GISSA Holding USA to CIC. The monies at issue were paid by GIS (the ultimate parent company of Cinsa, ENASA, and several other producing entities, as well as of the importer, CIC) to GISSA Holding USA (which is a holding company for CIC but not for Cinsa or ENASA). GISSA Holding USA then provided these funds to CIC for purposes that included payment of antidumping duties assessed on entries imported by Global during the 5th and 7th review periods, which were liquidated during 1996.

The Department preliminarily determined not to apply the reimbursement regulation based on a literal construction of that regulation and the fact that the transfer in question was not provided directly by a producer or exporter. Therefore, it took no position on whether a finding of reimbursement as to the 5th and 7th review entries could serve as the basis for application of the reimbursement regulation as to 10th review entries. As a result, the parties have not had an opportunity to comment on and provide evidence in connection with any new policy that might involve a finding of reimbursement as to either the 5th and 7th review entries or as to subsequent entries. Even if the Department were to agree with petitioners that Cinsa and ENASA reimbursed CIC for antidumping duties paid on 5th and 7th review entries, it could not apply the reimbursement regulation to these 10th review entries. To do so would be equivalent to imposing an irrebuttable (in this review) presumption that a pattern of reimbursement of duties paid on entries from earlier periods would be continued as to entries in later periods. This issue was not raised during the 10th review. It is well established that potentially affected parties must be given an opportunity to submit evidence specifically to rebut a presumption established by the Department, especially when, as in this case, the Department took a position in the preliminary results that made the submission of such evidence unnecessary during the administrative proceeding. *See, e.g., British Steel plc* v. *United States*, 879 F. Supp. 1254, 1316–17 (CIT 1995), *Sigma Corp.* v. *United States*, 841 F. Supp. 1255, 1267 (CIT 1993). The facts underlying this issue have not changed from the 9th review final results in which we determined that the reimbursement regulation did not apply. Therefore, the Department will maintain, for purposes of this review, the position taken in the 9th review and in the 10th review preliminary results based on the rationale given therein.

The Department has concerns about the nature of the cash transfer at issue in this case and intends to reconsider, in future reviews, whether reimbursement by Cinsa's and ENASA's corporate parent would constitute reimbursement under the Department's regulations. In the future, the Department may find it appropriate to apply the reimbursement regulation in instances in which a parent or other affiliate of a producer or exporter provided funds specifically for the payment of antidumping duties. Thus, the Department will examine closely transfers of funds between the producer/exporter, its affiliates, and the importer, made for the purpose of paying antidumping duties and cash deposits.

Further, we disagree with petitioner's arguments that we should find reimbursement based on (1) the principle of the fungibility of money and (2) the idea that expenses incurred by holding companies without operations are for the benefit of their subsidiaries with operations. See ''Issues Memo for the Final Results'' dated July 8, 1998, for additional information. In antidumping cases, the Department uses both of these concepts to deal with allocation of expenses associated with a parent company to the COP and constructed value (CV) of the company producing subject merchandise. In antidumping cases, the so-called ''fungibility principle'' is an aspect of the Department's methodology for calculating financial costs incurred in producing and selling subject merchandise based on an interest expense ratio reflecting the overall corporate borrowing experience. *E.g., Final Determination of Sales at Less than Fair Value: New Minivans from Japan*, 57 FR 21937, 21946 (Comment 18) (May 26, 1992). Just as the ''fungibility principle'' is used in dealing with interest expense, the holding company rule relates to the allocation of a portion of the general and administrative (G&A) expenses incurred by a non-producing parent company to the cost calculations for a firm producing subject merchandise that benefits from the activities/services generating such expenses. In the *Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products * * * From Canada*, 58 FR 37099, 37114 (Comment 47) (July 9, 1993), the Department expressed this principle as follows: ''The general expenses incurred by a parent company, without operations, relate to all of its subsidiaries with operations.'' This simply allows the Department to allocate a portion of general costs to the cost of producing subject merchandise.

Comment 2: Enamel Frit Cost

For purposes of the final results, respondents Cinsa and ENASA argue that the Department should use the transfer prices reported for enamel frit obtained from their affiliated supplier, ESVIMEX, without adjustment. However, the respondents state that, if the Department decides to adjust materials costs to reflect an ''adjusted market price,'' both the respondents and the petitioner agree that the Department erred in calculating the amount of the differential between market price and adjusted market price. The respondents believe that the Department improperly focused solely on the price difference between ESVIMEX's prices to Cinsa and ENASA, and ESVIMEX's prices to unaffiliated customers, rather than comparing the price paid by Cinsa and ENASA for ESVIMEX's frit, and the price paid by those producers for the enamel frit purchased from an unaffiliated producer, in order to determine whether ESVIMEX's prices to Cinsa and ENASA reflect fair market prices.

The respondents argue that the Department improperly concluded that the difference between ESVIMEX's prices to affiliated parties and those to unaffiliated parties was not attributable entirely to cost savings to ESVIMEX on its sales to affiliated parties, because the preliminary results failed to take into account prompt payment discounts, the existence of which was verified by the Department. Furthermore, the respondents argue that, even if prompt payment discounts are not taken into consideration, any remaining portion of the price differential not accounted for by verified cost savings represented a quantity discount granted to affiliated

purchasers because such purchasers accounted for a large majority of ESVIMEX's sales of enamel frit. Therefore, the transfer prices paid by Cinsa and ENASA to ESVIMEX would be fair market prices, according to the respondents.

Finally, Cinsa and ENASA contend that, even if it were appropriate for the Department to adjust Cinsa's and ENASA's reported raw material costs, the preliminary results overstated the adjustment. The respondents argue that, rather than corresponding to the percent of list price that is *not* documented by cost savings, the Department's adjustment incorrectly corresponds to the percent of list price that *is* documented by verified cost savings.

The petitioner maintains that Cinsa's and ENASA's cost of enamel frit purchased from its affiliate, ESVIMEX, should be based on unadjusted market prices, defined as the prices that unrelated parties paid ESVIMEX for frit, which is equivalent to the list prices less only the general discount given to all unrelated parties. The petitioner contends that the Department cannot conclude that Cinsa's and ENASA's transfer prices reflect market value, as claimed by the respondents, because the record demonstrates that ESVIMEX's prices for frit to Cinsa and ENASA were lower than the prices charged to unaffiliated customers. Moreover, the petitioner claims that the respondents base their claim on a comparison with a *de minimis* volume purchased from an unaffiliated supplier.

Alternatively, the petitioner argues that the Department should correct its preliminary calculation for purposes of the final results so that it adjusts Cinsa's and ENASA's material costs upward by what it terms the full difference between the market prices for frit and the adjusted market prices for frit, and provides a calculation which it claims will have this effect.

Furthermore, the petitioner asserts that regarding discounts (1) the Department should disregard the prompt payment discount because the respondents did not even allege the existence of such a discount prior to verification and provided no evidence indicating how often ESVIMEX granted this discount, and (2) there is no evidence to support the respondents' claimed quantity discount.

Finally, the petitioner contends that the Department should reject Cinsa's and ENASA's alternate calculation of the adjustment to materials costs because it calculates the percentage difference between market prices and theoretical transfer prices, not actual transfer prices, and therefore understates the appropriate percentage increase to Cinsa's and ENASA's materials costs.

DOC Position

For purposes of the preliminary results, we intended to increase the frit portion of the direct materials cost to account for difference between market prices and reported transfer prices that is not accounted for by documented cost savings. However, we agree with the respondents that we inadvertently overstated the amount necessary to increase the transfer price to equal an ''adjusted market price'' corresponding to the situation in which ESVIMEX sells to Cinsa and ENASA. Accordingly, for purposes of the final results, we have used in our calculation the percent of list price that is *not* documented by cost savings, as opposed to the percent of list price that *is* documented by verified cost savings, which we incorrectly used in our preliminary calculations.

We disagree with the petitioner's suggestion that the Department should make an adjustment to material costs based on the difference between the market prices for frit and the Department's calculation of an ''adjusted market price'' (*i.e.*, a price that the Department believes Cinsa and ENASA would have paid had they been unaffiliated purchasers). The adjustment made by the Department is intended to increase Cinsa's and ENASA's submitted frit costs (*i.e.*, transfer prices) so that they include the portion of the ''affiliates'' discount off list price which was not supported at verification as being attributable to cost savings. Therefore, the appropriate calculation measures the difference between the reported transfer price and the Department's adjusted market price.

With regard to the petitioner's argument that the reported prices are ''theoretical'' prices as opposed to ''actual prices,'' we verified invoices showing that the reported transfer prices (prices from ESVIMEX to Cinsa and ENASA) correspond to list prices minus the standard discount to affiliated parties.

In addition, we do not agree with Cinsa's and ENASA's argument that the Department must accept ESVIMEX's frit transfer prices as reported on the theory that the transfer price sales were made at a fair market value. Pursuant to section 773(f)(2) of the Act, a transaction between affiliated parties is considered an appropriate source of ascertaining the value of an input if it fairly represents the amount usually reflected in sales of subject merchandise in the relevant market. Based on the documents examined at verification, we have determined that, although the respondents adequately supported their claim with respect to all cost efficiencies listed on the schedule submitted at verification, these costs efficiencies did not account for the full extent of the discount accorded only to affiliated parties. Although Cinsa and ENASA then claimed that the unaccounted for portion of the affiliated party discount should be attributed to a volume discount, they were unable to quantify and support how the volume of their purchases resulted in market-based savings equivalent to that unaccounted for portion. Therefore, in accordance with the Department's longstanding policy of considering that transactions between affiliated parties are not at arm's length in the absence of sufficient evidence to the contrary, the Department reasonably determined that this standard had not been met with respect to ESVIMEX's frit transfer prices to Cinsa and ENASA, and based its cost calculations instead upon the ''adjusted market price'' described above.

We have also rejected Cinsa's and ENASA's suggestion that, in measuring the extent to which market forces do not account for the difference between the discount off list price given to affiliates and the discount off list price given to unaffiliated parties, we should take into account prompt payment discounts. Although the Department verified that such discounts are offered, Cinsa and ENASA have not provided any information on the frequency with which such discounts are actually given. In addition, such discounts constitute a recognition that a limited number of customers will require a lesser extension of credit by Cinsa and ENASA, not a general adjustment to price. Thus, the Department reasonably did not assume the existence of such a discount in calculating the normal market price for unaffiliated purchasers of frit.

Similarly, we decline to find that the prices for Cinsa's minimal purchases of enamel frit from an unaffiliated producer are an appropriate basis for determining whether their purchases from ESVIMEX reflect fair market prices. Because certain information regarding these transactions is business proprietary, *see* the *Issues Memo*.

Moreover, we do not agree with the respondents that it is sufficient to show that ESVIMEX's frit prices to affiliates are above ESVIMEX's COP. The respondents' argument to this effect ignores the provisions of section 773(f)(2) of the Act, which requires a comparison of transfer prices and market prices when the latter are available, and permits the use of the

higher of those prices. Thus, we compared the transfer prices Cinsa and ENASA paid to prices charged to unaffiliated customers. We noted that the prices charged to unaffiliated customers were greater than both the affiliated transfer prices and the actual costs incurred to produce the frit supplied to Cinsa and ENASA. Because the prices charged to unaffiliated customers did not reflect certain market-based savings unique to ESVIMEX's affiliates, however, we constructed an ''adjusted market price'' which did reflect these elements. Because this price was higher than both ESVIMEX's COP and the transfer price, in conformity with section 773(f)(2) and (3) of the Act, we based Cinsa's and ENASA's frit cost on the ''adjusted market price.''

Comment 3: Cinsa's and ENASA's Classification of Certain U.S. Sales as EP Rather Than CEP

The petitioner argues that Cinsa's and ENASA's classification of certain sales as EP is incorrect because, it claims, this classification is based only on the first of the three factors used by the Department for determining the classification of sales made through affiliated importers, *i.e.*, the fact that the merchandise in question was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the physical inventory of the related selling agent. The petitioner claims that, in order to classify U.S. sales through an affiliated importer as EP sales, the respondent must also provide evidence that EP was the customary commercial channel for sales of this merchandise between the parties involved, and that the affiliated importer acted only as a processor of documentation and a communication link with the unaffiliated U.S. buyer.

With regard to the second criterion, the petitioner argues that the relative volumes and values of sales direct from Mexico are not high enough for EP sales channel to be considered customary. With regard to the third criterion, the petitioner asserts that CIC's level of activity with respect to all U.S. sales, including those sales classified as EP sales, was far beyond what would be undertaken by a mere ''processor of sales documentation.'' Accordingly, the petitioner believes that the Department should reclassify as CEP sales all sales reported as EP sales.

Cinsa and ENASA argue that all three factors the Department uses to classify certain sales as EP were present with respect to the sales they classified as EP, claiming that the EP channel of trade with the participation of its U.S. affiliate is customary because it has been present since the initial investigation and in all subsequent reviews and that, although perhaps significant, the affiliate's activities consist of ministerial functions, such as the processing of purchase orders, collection of payment, arrangement of transportation, etc., as opposed to setting sales terms and prices and negotiating sales contracts.

DOC Position

We agree with the respondents that the facts on the record of this review shows that the sales reported as EP sales in this review should continue to be classified as EP sales. Pursuant to section 772(a) and (b) of the Act, an EP sale is a sale of merchandise by a producer or exporter outside the United States for export to the United States that is made prior to importation. A CEP sale is a sale made in the United States, before or after importation, by or for the account of the producer or exporter or by an affiliate of the producer or exporter. In determining whether the sales activity in the United States warrants using the CEP methodology, the Department has examined the following criteria: (1) Whether the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer, (2) whether this was the customary commercial channel between the parties involved, and (3) whether the function of the U.S. affiliate is limited to that of a ''processor of sales-related documentation'' and a ''communication link'' with the unrelated U.S. buyer. *See e.g., Final Results of Antidumping Duty Administrative Review: Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada (Canadian Steel)* 63 FR 12725, 12738 (March 16, 1998). In the Canadian Steel case, the Department clarified its interpretation of the third prong of this test, as follows. ''Where the factors indicate that the activities of the U.S. affiliate are ancillary to the sale (*e.g.*, arranging transportation or customs clearance, invoicing), we treat the transactions as EP sales. Where the U.S. affiliate has more than an incidental involvement in making sales (*e.g.*, solicits sales, negotiates contracts or prices) or providing customer support, we treat the transactions as CEP sales.''

With respect to the first prong, it is undisputed that the merchandise associated with these sales was shipped directly to the unaffiliated customer, without passing through the U.S. affiliate.

With respect to the second prong, this is the customary commercial channel between the parties involved. We agree with the respondents that it is not necessary for EP sales to be the predominant channel of trade in a given review for it to be the customary channel between the parties involved. EP sales have been made, with the participation of a U.S. affiliate, in the investigation and in all subsequent reviews. Thus, this is clearly a customary channel of trade.

With respect to the third prong, the verification report confirms that, for the sales classified as EP, prices are set by the Cinsa export office in Saltillo, Mexico. The participation of affiliate CIC in these sales relates primarily to: issuing payment invoices, accepting payment and forwarding it to Mexico, posting antidumping duty deposits, and clearing products through Customs. These services are clearly among those the Department considers ''ancillary'' to the sale. CIC does not solicit or negotiate these sales, does not set the price for these sales, and does not provide customer support in connection with these sales.

Therefore, for the purposes of this review, we will continue to treat as EP those sales which Cinsa and ENASA reported as EP sales. For further details *see* the *Issues Memo*.

Comment 4: Reallocation of Indirect Selling Expenses

The petitioner argues that, if the Department accepts Cinsa's and ENASA's designation of certain of their U.S. sales as EP sales, the Department should revise the indirect selling expense calculations and allocate CIC's total expenses over a sales value that excludes sales designated as EP based on the respondents' claim that CIC had no role in making EP sales. Otherwise, at a minimum, the petitioner maintains that the Department should not allocate to EP sales any of the indirect selling expenses incurred by CIC related to salesmen's salaries and benefits, travel expenses, warehouse lease, office rental, advertising, and any other expenses relating to functions that the respondents claim were not performed by CIC in support of EP sales.

The respondents argue that they properly allocated these expenses to all U.S. sales because indirect selling expenses are incurred on overall operations, which necessarily include both EP and CEP sales.

DOC Position

We agree with the petitioner that, for purposes of calculating indirect selling expenses, CIC expenses are more properly allocated over a U.S. sales value that excludes the EP sales. We

verified Cinsa's and ENASA's claim that CIC performed very limited sales-related functions with respect to these EP sales, and equal allocation of all CIC expenses across all U.S. sales in which CIC is involved would disproportionately shift these costs from CEP to EP sales. However, we disagree with the petitioner's suggested allocation because it would allocate all EP expenses to CEP sales. The numerator proposed by the petitioner would include all of CIC's expenses, *i.e.*, expenses for both EP and CEP sales, whereas the denominator would include the sales value of only CEP sales. We interpret the petitioner's alternative allocation methodology to mean we should, to the extent possible, allocate only to CEP sales (the only sales from which indirect selling expenses are deducted) the expenses that are only incurred on CEP sales. Accordingly, we have reallocated CIC's indirect selling expenses by including in the numerator the indirect selling expenses pertaining only to CEP sales (warehouse lease, advertising, forklift rental, salesmen's salaries and salesmen training) and a portion of the joint CEP and EP expenses (based on the percentage that CEP sales represent, by value, of total CIC sales). The new denominator is the value of only CEP sales. *See also* Final Results Calculation Memorandum. (*Calculation Memo*). Thus, we have excluded EP indirect selling expenses from the numerator and have excluded the value of EP sales from the denominator.

We disagree with the respondents that (all) indirect selling expenses are incurred on ''overall operations.'' Certain of CIC's indirect selling expenses (see list above) are not incurred on EP sales.

Comment 5: CEP Offset Adjustment

Cinsa and ENASA state they are entitled to a CEP offset because a comparison of the normal value (NV) level of trade to the CEP level of trade demonstrates that the NV level of trade is more advanced as well as at a different point in the chain of distribution because it includes a greater number of selling functions than the CEP level of trade. Cinsa and ENASA state that the Department's regulations require that when the CEP level of trade is determined, all economic activities in the United States and the indirect selling expenses attributable thereto are to be excluded. In contrast, when the normal value level of trade is determined it is inclusive of substantive selling functions and the indirect selling expenses necessary to execute a sale to unaffiliated customers. Accordingly, for purposes of comparison to the NV level of trade, Cinsa and ENASA argue that the selling functions and the indirect selling expenses of the CEP level of trade are limited to the initial sale by Cinsa's and ENASA's export department to CIC. Cinsa and ENASA further state that they are entitled to the CEP offset under the terms of the statute, 19 U.S.C. 1677b(a)(7)(B), because only one level of trade has been determined to exist in the home market, and Cinsa and ENASA are unable to quantify any pricing differential between the home market level of trade and the nonexistent CEP level of trade in the home market.

The petitioner argues that the Department should reject the respondents' claim for a CEP offset adjustment in the final results, based on the respondents' failure to establish that home market and CEP sales are at different levels of trade. The petitioner states that the record shows that the respondents sold to wholesalers and distributors in both markets and that these customers are not at a more remote point in the chain of distribution than CIC. In addition, the petitioner concludes that the selling functions are the same in both markets.

DOC Position

We agree with the petitioner. Section 773(a)(1)(B) of the Act requires that the Department establish NV, to the extent possible, based on home market sales at the same level of trade as the CEP or the EP sale. The SAA notes that if the Department is able to compare sales at the same level of trade, it will not make any level of trade adjustment or CEP offset in lieu of a level of trade adjustment. SAA at 829. Further, section 773(a)(7) expressly requires a difference in level of trade between the U.S. and home market sales as a prerequisite to a CEP offset. Specifically, sales in the home market must be at a more advanced stage of distribution.

In the home market, Cinsa and ENASA sell directly to wholesalers, distributors, large retailers and supermarkets. Cinsa and ENASA did not identify which of their home market customers fell into which of these categories and did not claim that there were differences in selling functions with respect to these designations. In short, the respondents treated these customers as being similarly situated for purposes of the LOT analysis. CIC is also a wholesaler/distributor of POS cookware. With regard to selling functions, Cinsa and ENASA reported in their April 28, 1997, questionnaire response that they performed the following selling functions for home market sales: freight and delivery services, inventory maintenance, and order processing and billing services. For sales to CIC, Cinsa's export department arranged freight and delivery services, incurred inventory maintenance, and provided sales support services such as invoice processing and billing. Therefore, Cinsa and ENASA have not demonstrated that their home market purchasers are at a different point in the chain of distribution than CIC and that the selling functions associated with Cinsa's and ENASA's sales to CIC were different from those associated with sales to customers in the home market. Thus, our analyses leads us to conclude that sales within each market and between markets are not made at different levels of trade.

Finally, we disagree with Cinsa's and ENASA's argument that the preliminary results failed to account for the fact that home market indirect selling expenses are included in the price associated with the ''NV level of trade'', whereas CIC's indirect selling expenses are excluded from the price associated with the ''CEP level of trade.'' First, the indirect selling expenses incurred in the United States by CIC's sales departments are, pursuant to section 772(d)(1)(D) of the statute, properly excluded from the price calculated for the U.S. CEP sales. Pursuant to this and other section 772(d) adjustments, CIC's price to its unaffiliated customer (the ''starting price'') is transformed into a constructed export price, *i.e.*, a constructed equivalent of a market-based sale by Cinsa or ENASA to CIC. This is the point at which the level of trade comparison is made. *See* New Regulations, 62 FR at 27414.[1] Second, Cinsa's and ENASA's itemized home market indirect selling expenses and itemized indirect selling expenses incurred in Mexico with respect to making sales to CIC are virtually the same. Therefore, the record reflects no difference between the functions performed by the respondents in selling to home market customers and the functions performed in selling to CIC.

Accordingly, we can compare sales in the home market and the U.S. market at

[1] This approach was recently challenged in *Borden, Inc.* v. *United States (Borden*) Slip Op. 98–36 (March 26, 1998), at 55–59 (rejecting the Department's practice of making 1677a(d) adjustments prior to making the level of trade comparisons). The Department intends to appeal this decision, and thus will continue to apply the methodology set forth in the New Regulations. We note, however, that, because the sales made by Cinsa and ENASA in the home market are not at a more advanced stage in the chain of distribution than either those made *to* CIC or those made *by* CIC (both are at a wholesale/distributor level of trade), implementation of the *Borden* decision would not affect the outcome in this case.

the same level of trade. Therefore, a CEP offset is not warranted.

Comment 6: Whether to Limit NV Comparisons to Sales Made in Same Month

Cinsa and ENASA argue that the Department's high inflation margin calculation methodology, which limits NV comparisons to the month of the U.S. sale, results in unduly high margins in the instant review because the Department based NV on CV when there were no home market sales of the most comparable model in the same month as the U.S. sale. Cinsa and ENASA suggest that, in order to obtain more price-to-price matches, the Department should use home market matches within the full 90/60 window period surrounding each U.S. sale, but index prices when it is necessary to compare a U.S. sale to a home market sale during a different month.

Alternatively, Cinsa and ENASA argue that the Department should expand the one-month window forward and use prices for identical merchandise in one of the two months subsequent to the date of the U.S. sales, without price adjustment.

The petitioner states that Cinsa's and ENASA's proposed methodology is not in accordance with the Department's policy regarding high inflation comparisons. In short, according to the petitioner, Cinsa and ENASA have not demonstrated that there is anything in the way they manufacture and sell subject merchandise that makes application of the Department's high inflation price comparison methodology inappropriate or unfair.

Finally, the petitioner believes the Department should reject Cinsa's and ENASA's alternative request to expand the price comparison window by two months because the further away from the same month the Department looks for a comparable home market sale in a high inflation case, the more likely it is that there would be distortion caused by inflation.

DOC Position

We agree with the petitioner. As in our preliminary results, we have limited our comparisons to sales in the same month rather than applying the Department's 90/60 rule, whereby the Department may use as NV comparison market prices from the three months prior to and the two months after the month in which the U.S. sale was made. The same month comparison rule accords with the Department's current practice in cases involving high inflation.

We disagree with the respondents' claim that the Department's high inflation methodology creates unduly high margins in this review. The Department's inflation methodology is designed to eliminate distortion caused by high inflation. It is neutral in purpose and is not designed to punish or benefit anyone. However, as a result of a recent court decision, the respondents' concerns have been addressed at least in part, albeit indirectly. On January 8, 1998, the Court of Appeals for the Federal Circuit issued a decision in *CEMEX* v. *United States,* 133 F.3d 897 (*CEMEX*). In that case, based on the pre-URAA version of the Act, the Court addressed the appropriateness of using CV (rather than similar merchandise) as the basis for foreign market value when the Department finds home market sales of the most similar merchandise to be outside the ''ordinary course of trade.'' This issue was not raised by any party in this proceeding. However, in response to the Court's decision in *Cemex,* the Department has revised its application of the cost test and has determined that it would be inappropriate to resort directly to CV, in lieu of foreign market sales, as the basis for NV upon finding foreign market sales of merchandise identical or most similar to that sold in the United States to be outside the ''ordinary course of trade.'' Instead we will match a given U.S. sale to foreign market sales of the next most similar model sold during the same month when all sales of the most comparable model are below cost. The Department will use CV as the basis for NV only when there are no above-cost sales in the appropriate comparison period that are otherwise suitable for comparison.

Therefore, for the final results in this proceeding, when making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market, as described above in the ''Scope of Review'' section of this notice, that were in the ordinary course of trade during the same month 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 during the same month to compare with U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade during the same month, based on the characteristics listed in Sections B and C of our antidumping questionnaire.

With regard to comparisons involving sets, where there were no sales of identical merchandise in the home market in the same month to compare to U.S. sales of subject merchandise sold in sets, we compared U.S. sales of sets to the CV of the set as we do not have the appropriate data in this review to compare non-identical sets. We will, however, request such information for purposes of future reviews.

In a few instances involving comparisons of open stock merchandise, we have still resorted to the use of CV due to the absence of comparable above-cost matches in the same month for certain U.S. sales.

Finally, the respondent's suggestion that we account for the effects of inflation by indexing *prices* for POS cookware is contrary to the Department's high inflation methodology. Although it is necessary to use *cost* indexing in high-inflation cases in order to calculate meaningful POR-average costs, the Department has rejected the use of indexed *prices.* It is the Department's position that price-to-price margin calculations should be made based only on actual, rather than indexed, prices, as using indexed prices would yield less accurate results.

Comment 7: Home Market Freight Expense Allocation

The petitioner argues that Cinsa's and ENASA's claim for an adjustment to NV for freight expenses incurred to ship subject merchandise from the factories in Saltillo to (1) the remote warehouses in Mexico City and Guadalajara, and (2) unaffiliated customers in the Monterrey region is distortive and should be rejected because these shipments contained both Cinsa- and ENASA-produced merchandise, as well as both subject and non-subject merchandise. The petitioner further argues that Cinsa billed ENASA for its share of the freight expenses based on the number of boxes of ENASA merchandise in each shipment, as opposed to the weight of the ENASA merchandise, which is heavier gauge that Cinsa's merchandise, thus incorrectly shifting expense from ENASA to Cinsa and artificially reducing Cinsa's NV.

In addition, with regard to post-sale freight expenses, the petitioner contends that allocating the total expense over subject and non-subject merchandise could inappropriately shift expense to subject merchandise if non-subject merchandise customers are located farther from the factories, on average, than customers of subject merchandise. The petitioner urges the Department to either reject Cinsa's and ENASA's claim for a freight adjustment or require them to revise their freight expense allocation.

The respondents argue that they were unable to report transaction-specific freight expenses because they received freight bills on a monthly basis, rather than a shipment-by-shipment basis. According to the respondents, the allocation of mixed-shipment freight expenses between the companies was reasonable because the packing list generated by the freight company indicated the number of boxes but not the weight of boxes. Moreover, the respondents argue that, because the freight expense was incurred on the basis of weight and the freight rate did not vary by the type of merchandise shipped, inclusion of sales of non-subject merchandise was not distortive to the calculation. Finally, the respondents note that not only has the Department accepted Cinsa's and ENASA's comparable allocations in all previous proceedings, but that the respondents' reporting of warehouse-specific freight factors represents a refinement in their reporting of pre- and post-sale freight expenses.

DOC Position

We have accepted the respondents' methodology for the calculation of home market freight expenses, including their allocation of such expenses (1) between Cinsa and ENASA and (2) between subject and non-subject merchandise.

The Department's preference is that, wherever possible, freight adjustments should be reported on a sale-by-sale basis rather than allocated over all sales. *See Final Results of Antidumping Duty Administrative Review: Replacement Parts for Self-Propelled Bituminous Paving Equipment from Canada,* 56 FR 47451 (September 19, 1991). If the respondent does not maintain freight records on a sale-by-sale basis, then our preference is to apply an allocation methodology at the most specific level permitted by the respondent's records kept in the normal course of business. *See Final Determination of Sales at Less Than Fair Value: Melamine Institutional Dinnerware Products from Indonesia,* 62 FR 1719, 1724 (January 13, 1997).

Cinsa and ENASA stated in their June 2, 1997, supplemental response that they do not maintain freight records on a sale-by-sale basis because Cinsa, which handles freight arrangements for both itself and ENASA, is billed only on a weight-per-truckload basis by its unaffiliated freight carrier. The freight company does not provide a weight-based breakout between Cinsa merchandise and ENASA merchandise. However, the packing list for each shipment indicates how many boxes contain Cinsa merchandise and how many boxes contain ENASA merchandise.

We disagree with the petitioner's claim that allocating the cost for each truckload between the two companies on the basis of number of boxes shifts freight expense to Cinsa. Although ENASA's products are heavy gauge steel and Cinsa's are light and medium gauge steel, a Cinsa ''box'' is not necessarily lighter than an ENASA ''box''; different boxes may contain different cookware items (*i.e.*, different models and sizes), and some boxes contain multiple items. In the absence of weight-based data, the box-based comparison is the most reasonable overall.

Likewise, we disagree with the petitioner's claim that the respondents' allocation of freight costs between subject and non-subject merchandise is distortive since the June 2, 1997, response shows that subject and non-subject merchandise destined for the same delivery point are charged the same weight-based rate. Further, the record shows that the respondents reported warehouse-specific freight factors. Thus, calculation of a weight-based factor based upon the freight expense and shipping weight for all merchandise and application of the resulting factor to the weight of subject merchandise yields a non-distortive allocation of the freight expense attributable only to subject merchandise. Finally, Cinsa and ENASA have used comparable allocation methodologies in each of the previous segments of this proceeding, in each of which the Department has determined that they are reasonable in light of the objectives of the antidumping law. Accordingly, we accepted Cinsa's and ENASA's freight calculations as submitted in their sales databases in this review as reasonable and non-distortive.

Comment 8: Freight Expenses on U.S. Sales

The petitioner states that Cinsa and ENASA reported freight expenses incurred to ship subject merchandise to the United States by allocating total freight expenses incurred over the weight of all merchandise shipped. These freight expenses were reported in two steps: (1) expenses incurred to ship merchandise from Saltillo to the U.S. border (for EP and CEP sales), and (2) expenses incurred to ship merchandise from the U.S. border to CIC's warehouse in San Antonio, Texas (CEP sales only). The petitioner argues that the denominators in the above-referenced calculations are incorrect because the weight of the merchandise shipped in Step 1, which should contain both EP and CEP sales, is significantly lower than the weight of the merchandise shipped in Step 2, which should contain only CEP sales. Furthermore, according to the petitioner, the weights used in these calculations do not correspond to the weights of merchandise sold as reported on the respondents' sales tapes. Accordingly, for purposes of the final results, the petitioner maintains that the Department should reject Cinsa's and ENASA's U.S. freight calculations and, as facts available, recalculate the per kilogram expenses based on the weight of merchandise sold as reported on the sales tapes.

Cinsa and ENASA concede that the weight amount reported by CIC for shipment from Laredo to San Antonio was inadvertently overstated, but state that the error can be corrected using information already in the record. The respondents disagree with the petitioner's suggestion that the weight of EP and CEP sales from the sale tape be used as the denominator for Mexican inland freight because that freight factor was calculated on the basis of expenses incurred upon sales of both subject and non-subject merchandise, which were shipped together. Therefore, according to the respondents, the reported weight of the merchandise shipped must include both subject and non-subject merchandise. Likewise, the respondents also disagree with using the weight of CEP sales from the sales tape as the denominator for the U.S. inland freight factor because in addition to the inclusion of non-subject merchandise, the U.S. inland freight factor was calculated based on freight expenses incurred on all merchandise shipped from Laredo to San Antonio, regardless of whether it was resold to unrelated U.S. customers during the period of review (POR) or whether it remained in inventory in San Antonio.

DOC Position

The Department agrees that the denominator of the U.S. inland freight ratio (Step 2, above) should be recalculated by subtracting the weight of the merchandise shipped from Saltillo to Laredo, which was inadvertently also included in the Step 2 weight calculation. The petitioner's suggestion that the weight of CEP sales, as derived from the sales tape, be used as the denominator for U.S. inland freight is incorrect because it fails to take into consideration two important details. First, the numerator in the calculation (freight expenses) includes both subject and non-subject merchandise. Second, the numerator also includes expenses incurred on all merchandise shipped from Laredo to San Antonio, Texas,

regardless of whether it was resold to unrelated U.S. customers or whether it remained in inventory in San Antonio. Accordingly, in order to obtain a proper ratio, the denominator (weight shipped) must be based correspondingly upon the weight of all subject and non-subject merchandise as well as on the weight of both merchandise sold and that remaining in inventory in San Antonio. The weight on the sales tapes represents total CEP sales; thus this figure does not include non-subject merchandise or merchandise remaining in inventory in San Antonio. Therefore, for purposes of the final results, we have deducted freight expenses, corrected as noted above, from U.S. price. *See Calculation Memo.*

Comment 9: Calculation of Indirect Selling Expenses and CEP Profit

The petitioner argues that the Department's preliminary results calculation of U.S. indirect selling expenses and CEP profit for Cinsa and ENASA are understated because they do not include (1) all of CIC's reported indirect selling expenses (depreciation, financial and bad debt expenses were excluded), (2) expenses incurred by CIC to finance antidumping duty cash deposits and assessments, and (3) indirect selling expenses incurred in Mexico in support of sales to the United States. The petitioner believes that the Department should include the above-mentioned expenses in the calculation of U.S. indirect selling expenses and CEP profit for purposes of the final results.

Cinsa and ENASA disagree with the petitioner's claim that the Department should have deducted the above-referenced expenses from CEP. The respondents claim that: (1) Depreciation, financial and bad debt expenses are financial and operating expenses and do not involve expenses related to the sale of the subject merchandise or overhead expenses of the U.S. affiliate and, according to the statute, only direct selling expenses, indirect selling expenses and general and administrative expenses are to be deducted from CEP; (2) expenses incurred in the payment of antidumping duties are not indirect selling expenses that benefit U.S. sales of subject merchandise; and (3) indirect selling expenses of Cinsa's export department and the inventory carrying costs for the period in which the exported merchandise was in Mexican inventory do not relate to economic activity in the United States.

DOC Position

For purposes of the final results, we have deducted from CEP depreciation, financial and bad debt expenses, as well as commissions. We did not deduct the indirect selling expenses of Cinsa's export department or the inventory carrying costs for the period in which the exported merchandise was in Mexican inventory.

CIC's sole function is to sell merchandise produced by Cinsa, ENASA, and their affiliates in the U.S. market. In such circumstances, the Department's practice is to deduct CIC's selling, general, and administrative expenses from CEP. *See Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany*, 61 FR 38166, 38176 (July 23, 1996). This includes CIC's depreciation, financial and bad debt expenses, which are considered related to CIC sales of the subject merchandise and thus deducted from CEP pursuant to section 772(d)(1)(D). With regard to CIC's expenses to finance loans from Cinsa used for payment of antidumping cash deposits, although we have long maintained, and continue to maintain, that antidumping duties and cash deposits of antidumping duties are not expenses that we should deduct from U.S. price, it is also the Department's position that, unlike the duties and cash deposits themselves, financial expenses associated with cash deposits are not a direct, inevitable consequence of an antidumping duty order. Therefore, we agree with the petitioner that it is reasonable to include such financing expenses in the indirect selling expense calculation for the CEP sales made by CIC. *See 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*, 63 FR 2558, 2571 (January 15, 1998). However, the record of this review does not indicate whether CIC's interest expenses with respect to intracorporate loans to pay antidumping duties and cash deposits that were either incurred or accrued during the POR were included in CIC's reported U.S. indirect selling expense calculation. Therefore, the Department made no adjustment to U.S. indirect selling expenses, which may already include CIC's interest expenses to finance loans from Cinsa. We will, however, request clarification of this issue on the record of future reviews.

With regard to indirect selling expenses incurred in Mexico in support of sales to the United States, we agree with the respondents that such expenses do not relate to economic activity in the United States. The Department's current practice, as indicated by the preamble to the Department's New Regulations, is to deduct indirect selling expenses incurred in Mexico from the CEP calculation only if they relate to sales to the unaffiliated purchaser in the United States. We do not deduct from the CEP calculation indirect selling expenses incurred in Mexico on the sale to the affiliated purchaser. Accordingly, because Cinsa and ENASA reported that certain indirect expenses incurred in Mexico are not associated with selling activity occurring in the United States, but are limited to selling activities associated with the sale of merchandise in Mexico to the affiliated party, CIC, we have not deducted these Mexican indirect selling expenses from the CEP calculation.

Comment 10: Calculation of U.S. Imputed Credit Expenses

According to the respondents, although the Department's analysis memorandum for the preliminary results (*see Antidumping Duty Administrative Review of Porcelain-on-Steel Cookware from Mexico* (95–96): Adjustments to Submitted Data) stated that the Department modified the calculation of reported credit cost to reflect U.S. imputed credit cost based on unit prices net of discounts, the computer program used for the preliminary results failed to reflect this intent. Therefore, credit cost was overstated because imputed credit on U.S. sales was based on gross price rather than net price.

The petitioner argues that the Department did not deduct any values from gross unit price in its calculation of U.S. credit expense because Cinsa and ENASA reported that they did not grant any discounts or rebates on U.S. sales during the POR. According to the petitioner, the values identified as rebates by Cinsa and ENASA are actually warranty expenses and the calculation of U.S. credit expenses net of warranty or any other direct selling expenses would be contrary to the Department's policy.

DOC Position

We agree with Cinsa and ENASA that discounts should be deducted from the U.S. imputed credit calculation. However, for purposes of this review, the issue is moot because no discounts were reported in the U.S. market. We also agree with the respondents that the rebates reported by Cinsa and ENASA are not warranties, as claimed by the

petitioner. The respondents have characterized these rebates as ''post-sale price adjustments to account for short-shipments or returned merchandise.'' There is no information on the record to indicate that the returned merchandise is defective—a prerequisite for a warranty expense. However, this issue is also moot since we did not deduct rebates or warranties from the price on which imputed credit is based.

Final Results of Review

As a result of this review, we have determined that the following margins exist for the period December 1, 1995 through November 30, 1996:

Manufacturer/Exporter	Margin (percent)
Cinsa	17.33
ENASA	62.75

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated an importer-specific assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total value of those same sales. This rate will be assessed uniformly on all entries of that particular importer made during the POR. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements shall be effective, upon publication of this notice of final results of administrative review, for all shipments of the subject merchandise from Mexico that are entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit rates for Cinsa and ENASA will be the rates established above; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) The cash deposit rate for all other manufacturers or exporters of this merchandise will continue to be 29.52 percent, the all others rate established in the final results of the less than fair value investigation (51 FR 36435, October 10, 1986). The cash deposit rate has been determined on the basis of the selling price to the first unaffiliated customer in the United States. For appraisement purposes, where information is available, the Department will use the entered value of the merchandise to determine the assessment rate.

The deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulation and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 353.22.

Dated: July 8, 1998.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–18884 Filed 7–15–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

A–583–815

Certain Welded Stainless Steel Pipe From Taiwan; Final Results of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of administrative review.

SUMMARY: On January 9, 1998, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of the 1995–1996 administrative review of the antidumping duty order on certain welded stainless steel pipe from Taiwan (A–583–815). This review covers one manufacturer/exporter of the subject merchandise during the period December 1, 1995 through November 30, 1996.

We gave interested parties an opportunity to comment on the preliminary results. Although, based upon our analysis of the comments received, we have changed the results from those presented in our preliminary results of review, a *de minimis* dumping margin still exists for Ta Chen's sales of welded stainless steel pipe (WSSP) in the United States. Accordingly, we will instruct the U.S. Customs Service to assess antidumping duties on entries of Ta Chen merchandise during the period of review, in accordance with the Department's regulations (19 CFR 353.6).

EFFECTIVE DATE: July 16, 1998.

FOR FURTHER INFORMATION CONTACT: Robert James at (202) 482–5222 or John Kugelman at (202) 482–0649, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Applicable Statute and Regulations: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 353 (April 1, 1997).

SUPPLEMENTARY INFORMATION:

Background

On December 30, 1992, the Department published in the **Federal Register** the antidumping duty order on welded stainless steel pipe (WSSP) from Taiwan (57 FR 62300). On December 3, 1996, the Department published the notice of ''Opportunity to Request Administrative Review'' for the period December 1, 1995 through November 30, 1996 (61 FR 64051). In accordance with 19 CFR 353.22(a)(1) (1997), respondent Ta Chen Stainless Pipe Co., Ltd. and its wholly-owned U.S. subsidiary, Ta Chen International (collectively, Ta Chen), requested that we conduct a review of their sales. On January 17, 1997, we published in the **Federal Register** our notice of initiation of this antidumping duty administrative review covering the period December 1, 1995 through November 30, 1996 (62 FR 2647).

Because it was not practicable to complete this review within the normal time frame, on July 24, 1997, we published in the **Federal Register** our notice of extension of time limits for this review (62 FR 39824). We published the preliminary results of this review in the **Federal Register** on January 9, 1998 (Certain Welded Stainless Steel Pipe From Taiwan; Preliminary Results of Administrative Review, 63 FR 1437 (Preliminary Results)). We published our notice of extension of time limits for these final results in the **Federal Register** on March 17, 1998 (63 FR 13032).

Furthermore, on January 12 through January 20, 1998, the Department conducted a verification of Ta Chen's home market sales data at Ta Chen's headquarters in Tainan, Taiwan. We also verified Ta Chen's U.S. sales data at the premises of Ta Chen International on January 26 through January 29, 1998 (see ''Results of Verification,'' below). The full results of our verification are detailed in the Department's verification reports. Public versions of these, and all public documents referenced in this notice, are on file in Room B–099 of the main Commerce building.

Petitioners and Ta Chen timely filed case briefs on May 14, 1998; Ta Chen replied with its rebuttal brief dated May 21, 1998.

The Department has now completed this review in accordance with section 751 of the Tariff Act.

Scope of the Review

The merchandise subject to this administrative review is certain welded austenitic stainless steel pipe (WSSP) that meets the standards and specifications set forth by the American Society for Testing and Materials (ASTM) for the welded form of chromium-nickel pipe designated ASTM A–312. The merchandise covered by the scope of the order also includes austenitic welded stainless steel pipes made according to the standards of other nations which are comparable to ASTM A–312.

WSSP is produced by forming stainless steel flat-rolled products into a tubular configuration and welding along the seam. WSSP is a commodity product generally used as a conduit to transmit liquids or gases. Major applications for WSSP include, but are not limited to, digester lines, blow lines, pharmaceutical lines, petrochemical stock lines, brewery process and transport lines, general food processing lines, automotive paint lines, and paper process machines.

Imports of WSSP are currently classifiable under the following Harmonized Tariff Schedule of the United States (HTS) subheadings: 7306.40.5005, 7306.04.5015, 7306.40.5040, 7306.40.5065, and 7306.40.5085. Although these subheadings include both pipes and tubes, the scope of this investigation is limited to welded austenitic stainless steel pipes. Although the HTS subheadings are provided for convenience and Customs purposes, our written description of the scope of this order is dispositive.

The period for this review is December 1, 1994 through November 30, 1995. This review covers one manufacturer/exporter, Ta Chen.

Results of Verification

As provided in section 782(i) of the Tariff Act, we verified information provided by the respondent using standard verification procedures, including on-site inspection of Ta Chen's facilities in Tainan, Taiwan and Ta Chen International's headquarters in Long Beach, California, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results for the home market and U.S. verifications are outlined in public versions of, respectively, the Home Market Verification Report and the U.S. Verification Report, available to the public in Room B–099 of the main Commerce building. In preparing for verification Ta Chen discovered minor corrections which it presented to the Department's verifiers at the start of the home market and U.S. verifications. In addition, as noted in the ''Analysis of Comments'' section, below, our verifications revealed other minor inaccuracies in Ta Chen's submitted data. Where appropriate, we have adjusted Ta Chen's reported sales data to reflect these corrections.

Analysis of Comments Received

Comment 1: Export Price Versus Constructed Export Price Sales

Petitioners take issue with the determination in the Preliminary Results to treat all of Ta Chen's U.S. sales as export price (EP) sales, as defined in section 772(a) of the Tariff Act. Rather, petitioners maintain, Ta Chen's so-called ''back-to-back'' sales through Ta Chen International (TCI) properly are considered constructed export price (CEP) transactions. Petitioners assert that the Department customarily examines the activities of the affiliated U.S. importer in determining whether U.S. sales should be classified as EP or CEP sales using a three-prong test: (i) Whether the merchandise is shipped directly from the manufacturer to the unaffiliated purchaser without entering the physical inventory of the U.S. affiliate; (ii) whether direct shipment from the manufacturer to the unaffiliated purchaser is the customary channel of sales for the subject merchandise; and (iii) whether the U.S. selling agent acted merely as a processor of sales-related paperwork and a communication link between the manufacturer and the unaffiliated purchaser. See Petitioners' May 14, 1998 Case Brief (Case Brief) at 2, citing Roller Chain, Other Than Bicycle Chain, From Japan, 63 FR 25450 (May 8, 1998) (Roller Chain). Even if the transactions involving TCI meet the first two prongs of this test, petitioners continue, record evidence establishes that, as to the third point, TCI acted as more than just a paper processor or communications link. Claiming that TCI is ''integrally involved'' with Ta Chen's U.S. sales of subject merchandise, petitioners point out that U.S. customers approach TCI, not Ta Chen, when seeking price quotes. Case Brief at 3, quoting the Department's Home Market Verification Report at 12. The verification report continues by stating that the president of Ta Chen and TCI, Robert Shieh, responds directly to the unaffiliated U.S. customer. According to petitioners, what happens when the customer rejects the initial quote and further price negotiations are required is not clear; petitioners therefore make the ''reasonable inference'' that TCI concludes any such negotiations itself on behalf of Ta Chen in Taiwan. *Id.* at 4. Further, petitioners argue, Ta Chen ''glosses over'' Mr. Shieh's role in Ta Chen's U.S. sales; as noted, in addition to being president of Ta Chen, Mr. Shieh is also president of TCI, and spends a considerable amount of his time in the United States at TCI's Long Beach headquarters. Petitioners suggest that this indicates that Mr. Shieh is acting as president of TCI, not of Ta Chen in Taiwan, when he negotiates U.S. sales of welded stainless steel pipe.

Petitioners stress that when viewing sales transactions involving a U.S. firm affiliated with the exporter, the Department will presume that the transactions are CEP sales unless the record indicates that the affiliate's role in the sale was ''incidental or ancillary.'' Case Brief at 5, citing Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea, 63 FR 13170, 13177 (March 18, 1998) (Korean Steel III). When viewed in its totality, petitioners aver, the evidence demonstrates that TCI's role was more than ancillary and, thus, Ta Chen's U.S.

sales should be treated as CEP sales. For example, petitioners argue, TCI purchases subject pipe from Ta Chen and assumes ownership and risk of loss, and TCI, not Ta Chen in Taiwan, actually enters into the sales contract with the unaffiliated U.S. customers. This situation, petitioners maintain, is analogous to that found in Korean Steel III where, as here, the U.S. affiliate acted as the conduit for the foreign parent's U.S. sales, the U.S. affiliate entered into the sales contracts with unaffiliated U.S. customers, the U.S. affiliate played a key role in all sales activities (such as issuing invoices, collecting payment, financing the sale, etc.), and the U.S. affiliate incurred ''significant selling expenses in the United States.'' Case Brief at 6. In light of TCI's ''very meaningful'' role in Ta Chen's U.S. sales, petitioners conclude, the Department should treat all of Ta Chen's sales as CEP transactions.

Ta Chen counters that the Department's treatment of Ta Chen's U.S. sales as EP transactions was the correct interpretation of the statutory definition of EP sales. Furthermore, Ta Chen insists, nothing found at verification contradicted Ta Chen's long-standing assertion that its U.S. sales comprised EP (or, under the pre-URAA statute, ''purchase price'') transactions. Citing Extruded Rubber Thread From Malaysia, 62 FR 33588 (June 20, 1997) (Extruded Rubber), Ta Chen argues that the Department examined a similar fact pattern surrounding so-called ''back-to-back'' sales and concluded that where all three conditions of the Department's test are met (*i.e.*, the merchandise was shipped directly to the unaffiliated U.S. customer, the channel of distribution was normal for the parties involved, and the U.S. selling agent acted as a communication link only), the transactions qualify for treatment as EP sales. According to Ta Chen, Extruded Rubber also noted that the Tariff Act defines EP as ''the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States * * *'' Ta Chen's Rebuttal Brief at 5, quoting Extruded Rubber at 33597 (Ta Chen's emphasis).

Ta Chen submits that all of its sales of subject pipe during this review were shipped directly from Ta Chen's Tainan plant to the unaffiliated U.S. customer. This channel of distribution, Ta Chen avers, has been customary between Ta Chen and its U.S. customers ''since well before the U.S. dumping matter began,'' noting that it employed ''back-to-back'' sales as one of its major channels of distribution prior to the 1991 filing of the antidumping petition.

As to the third test, whether Ta Chen International acted merely as a processor of sales-related documents and communications link between Ta Chen and its U.S. customers, Ta Chen insists that TCI's activities are even less extensive than those typically cited by the Department as possible indicators that a U.S. affiliate played a more substantial part in the sales in question. For example, Ta Chen continues, the Department's January 22, 1998 Antidumping Manual suggests that functions ''such as the administration of warranties, advertising, in-house technical assistance, and the supervision of further manufacturing may indicate that the [U.S.] agent is more than the sales facilitator envisioned for EP sales.'' Rebuttal Brief at 5, quoting Antidumping Manual, Chapter 7 (Ta Chen's emphasis). That TCI engages in none of the activities suggested as indicating sales might be considered CEP transactions, Ta Chen maintains, further supports the Department's preliminary determination that these sales warranted EP treatment.

Furthermore, Ta Chen continues, in Extruded Rubber the Department found sales to be EP transactions ''irrespective of any involvement in the pricing of these sales by the U.S. subsidiary.'' Rebuttal Brief at 6. In Ta Chen's view the key determinant in the EP versus CEP analysis is the statute's focus on whether the ''subject merchandise is first sold (or agreed to be sold) before the date of importation,'' as is the case in the instant review. Ta Chen submits that for its U.S. transactions the subject merchandise was first sold to the unaffiliated U.S. customer before importation and subsequently shipped directly to that customer, pointing to the purchase orders and shipment dates as confirmation. Thus, Ta Chen argues, the controlling statutory language defines these as EP sales. As to Robert Shieh's involvement in setting prices, Ta Chen argues in both its case and rebuttal briefs that Mr. Shieh ''acts under the direction of Ta Chen Taiwan's Board of Directors'' which has ''directed Mr. Shieh to set U.S. prices based on cost of production in Taiwan and Ta Chen's home market prices * * *'' Ta Chen's Case Brief at 3 and 4; Ta Chen's Rebuttal Brief at 7, quoting Ta Chen's supplemental response at 253. ''Robert Shieh's authority,'' Ta Chen asserts, ''flows from Ta Chen Taiwan,'' and not from TCI. Rebuttal Brief at 9. In any event, Ta Chen concludes, a U.S. affiliate's active participation in the sales process is insufficient grounds for treating sales as EP transactions where the affiliate lacks the ability to set prices or terms of sale. *Id.* at 8, citing Certain Stainless Steel Wire Rods From France, 58 FR 68865 (December 29, 1993).

Ta Chen also contests several factual conclusions posited in petitioners case brief. According to Ta Chen, TCI passed requests for quotes from U.S. customers to Ta Chen Taiwan, a role consistent with that of a paper processor. Ta Chen also insists that the amount of time Mr. Shieh spends in the United States is a ''personal decision'' relating to his family which is irrelevant to the Department's antidumping analysis. Further, that TCI actually purchases the subject merchandise and then enters into contracts to sell it to unaffiliated U.S. customers (in ''back-to-back'' sales transactions) is the same situation found in Extruded Rubber and Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea, 62 FR 18404 (April 15, 1997) (Korean Steel II), where the Department analyzed the sales in question as EP transactions. Finally, Ta Chen rejects petitioners' ''speculative claims'' that TCI takes over and concludes price negotiations for Ta Chen's U.S. sales independently of Ta Chen Taiwan in those cases where a customer rejects Ta Chen's initial price offering.

Furthermore, Ta Chen argues, petitioners reliance on Korean Steel III is misplaced, noting several quantitative and qualitative differences between the activities of TCI when compared to those of the affiliated U.S. resellers in Korean Steel III. Ta Chen suggests that in the latter case, U.S. customers seldom had contact with the foreign producer, nor did the foreign producer set prices for U.S. sales. Furthermore, the U.S. affiliates financed U.S. sales by borrowing to finance accounts receivable. These facts, Ta Chen insists, do not obtain in the instant review.

Assuming, arguendo, that Ta Chen's sales are properly considered CEP transactions, Ta Chen suggests that the record contains sufficient information to make any adjustments to U.S. price and normal value required under a CEP analysis. Furthermore, Ta Chen argues that should the Department elect to treat Ta Chen's sales as CEP transactions, Ta Chen should be granted a CEP offset in lieu of a level-of-trade adjustment, as its home market sales represent a more advanced stage of marketing than the Ta Chen—TCI CEP level of trade. Ta Chen makes further comments regarding the Department's treatment of sales to specific customers in prior review periods. As these customers do not appear in this review, any comments

concerning sales made in prior PORs are thus irrelevant to this review and are not addressed here.

Department's Position

We disagree with petitioners, and agree, in part, with respondent that Ta Chen's U.S. sales in this review warrant treatment as EP transactions. As a threshold matter, while we agree with Ta Chen that its U.S. sales in this review warrant EP treatment, we disagree with Ta Chen's assertions that the statute requires the Department in every instance to treat sales which precede importation as EP sales. Rather, while the statute defines EP as involving sales made prior to importation, the relevant statutory definition of CEP states clearly that

> * * *''constructed export price'' means the price at which the subject merchandise is first sold (or agreed to be sold) into the United States *before or after* the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter * * *

See Section 772(b) of the Tariff Act (emphasis added).

Thus, nothing in the statute requires the Department to treat as EP transactions all sales which happen to precede the date of importation. Rather, sales taking place prior to importation may be either EP or CEP sales, given the specific circumstances surrounding the transactions. In the instant review, as we stated above, the evidence on record does not support a reclassification of Ta Chen's U.S. sales from EP to CEP transactions. Nothing in the statute, however, precludes the Department from doing so, where appropriate.

To ensure proper application of the statutory definitions, where a U.S. affiliate is involved in making a sale, we consider the sale to be CEP unless the record demonstrates that the U.S. affiliate's involvement in making the sale is incidental or ancillary. See Korean Steel III, 63 FR 13170, 13177 (March 18, 1998). Whenever sales are made prior to importation through an affiliated entity in the United States, the Department applies a three-pronged test to determine whether to treat such sales as EP, as follows: (i) Whether the merchandise was shipped directly to the unaffiliated buyer, without first being introduced into the affiliated selling agent's inventory; (ii) whether direct shipment from the manufacturer to the unaffiliated buyer was the customary channel for sales of this merchandise between the parties involved; and (iii) whether the affiliated selling agent located in the United States acts only as a processor of sales-related documentation and communication link between the foreign producer and the unaffiliated purchaser. See, e.g., *PQ Corp.* v. *U.S.*, 652 F. Supp. 724, 731 (CIT 1987) and *Outokumpu Copper Rolled Products* v. *United States*, 829 F. Supp. 1371, 1379 (CIT 1993). Where all three of these criteria are met, we consider the exporter's sales functions to have been relocated geographically from the country of exportation to the United States, where the sales agent performs them. See, e.g., Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany, 61 FR 38166 (July 23, 1996), New Minivans From Japan, 57 FR 21937 (May 26, 1992), and Certain Internal-Combustion Forklift Trucks From Japan, 53 FR 12552 (April 15, 1988). Furthermore, as we stated in Stainless Steel Wire Rod From Spain, 63 FR 10849 (March 5, 1998) (Preliminary Determination), where ''the activities of the U.S. affiliate are ancillary to the sale (e.g., arranging transportation or customs clearance), we treat the transactions as EP sales. Where the U.S. affiliate is substantially involved in the sales process (e.g., negotiating prices, performing support functions), we treat the transactions as CEP sales.'' 63 FR 10849, 10852; see also Korean Steel III.

As for the first criterion in this case, i.e., direct shipment to the unaffiliated U.S. customer, no party to these proceedings has presented any evidence to challenge Ta Chen's statements that in the instant review Ta Chen shipped the subject merchandise directly to the unaffiliated U.S. customer's location (or to the U.S. port designated by the customer) without first introducing the merchandise into TCI's physical inventory. Further, we discovered no evidence at verification to suggest that the merchandise was shipped in any other fashion.

With respect to the second criterion, i.e., whether direct shipment to the customer is the customary channel of trade, we agree with Ta Chen. No evidence on record contradicts Ta Chen's statement that direct shipment was the normal course of business long before this dumping matter began. See Ta Chen's April 14, 1997, questionnaire response at 5 and 6. In the most-recently-concluded past review, the Department has treated Ta Chen's sales as EP sales based, in part, upon direct shipment from Ta Chen to the U.S. customer. See Certain Welded Stainless Steel Pipe From Taiwan; Preliminary Results of Administrative Review, 62 FR 1435, 1436.

With respect to the third criterion, i.e., whether Ta Chen International (TCI) acted as a processor of sales-related documentation and a communication link with the unaffiliated purchaser, the facts on record indicate that TCI's role is ancillary to the sales process with respect to sales of subject merchandise during this administrative review. In this review TCI did not play a key role in the sales negotiation process, nor did TCI play a major role in the selling activities in the United States. Accordingly, we have continued to accord EP treatment to Ta Chen's sales in this review.

In this case the available evidence of record indicates that Ta Chen in Taiwan is responsible for setting the prices of U.S. sales, acting through its president, Robert Shieh.[1] Ta Chen sets base, or minimum, prices using its costs of production in Taiwan. Ta Chen responds to requests for price quotes, and Ta Chen officials in Tainan develop new quotes for any sizes or schedules of pipe not found on Ta Chen's prepared lists. See, e.g., Ta Chen's supplemental response at 79, n. 12, and U.S. Verification Report at 10. Further, Ta Chen knows the final price to the U.S. customer at the time it sets its transfer prices between Ta Chen and TCI, and the record clearly indicates that TCI has no say in the prices of these transactions.[2] Thus, the subject merchandise is first sold to the unaffiliated customer in the United States before it is sold to the affiliated distributor, TCI. There is no record evidence, either submitted by the parties or generated at verification, to indicate that TCI has any independent authority to negotiate or set prices for direct sales of subject merchandise in the United States. For example, the Home Market Verification Report at 13 notes that the vice-president of TCI will not quote prices to customers; rather, he defers to Mr. Shieh, whether the latter is in Long Beach or in Tainan. This is decidedly not the case for TCI's sales of non-subject merchandise from its

[1] While we agree with Ta Chen that in setting prices Mr. Shieh is acting principally in his role as president of Ta Chen, rather than as president of TCI, we reject Ta Chen's dictum that he ''acts under the direction of Ta Chen's Board of Directors,'' or that the Board of Directors issues specific instructions to Mr. Shieh as to how to set prices. Rather, the record evidence, including Mr. Shieh's statements at verification, makes abundantly clear that Mr. Shieh acts on his own authority with no direction or input whatever from any other member of Ta Chen's Board.

[2] That TCI has no say whatever in the profitability of its own sales of subject merchandise, by determining the amount of a price markup, is further evidence that the entire sales process is controlled by Ta Chen in Taiwan. See Korean Steel III at 13183.

warehouse facilities. The U.S. Verification Report notes that:

> [c]ustomers' requests for price quotes are handled by TCI and not forwarded to Ta Chen. A number of officials at TCI are authorized to provide quotes to customers for these sales * * *. The customer's [purchase order] is handed directly to TCI's shipping department for preparation and shipment.

U.S. Verification Report at 8 (emphasis added).

Moreover, the authority to set prices as indicated above is further evidenced by the ways in which the companies set prices for ''back-to-back'' sales and sales out of TCI's inventory. The prices of TCI's sales from its Long Beach inventory are set on an entirely different basis than prices for direct shipments. Prices for products sold out of inventory are derived from a multiplier of a domestic mill's list prices, whereas prices for direct shipments are computed from Ta Chen's cost of production. Finally, unlike the case of Korean Steel III, in the present case unaffiliated U.S. customers maintain direct contact with the foreign exporter or producer, Ta Chen.

With respect to any subsequent price negotiations that may become necessary when a customer rejects Ta Chen's initial quote, it is clear from the record that in Ta Chen's ''back-to-back'' sales arrangement no official other than Mr. Shieh is authorized to provide prices, grant discounts, or allow credits for damaged or defective goods. After discussions with company officials at verifications in Tainan and Long Beach, it is clear that TCI company officials are not authorized to negotiate prices. See, e.g., Home Market Verification Report at 13 (''Using the same pricing scheme (cost + GNA + profit), Ta Chen Taiwan will provide a price quote''), and U.S. Verification Report at 3 (''While TCI's vice-president, James Chang, is nominally head of the pipe and fittings sales division, Mr. Chang himself averred that Mr. Shieh 'handles all the [pipe and pipe fittings] sales' '').

As for petitioners' observation that Ta Chen resumed sales of subject merchandise from inventory immediately following the instant POR, thus supporting a conclusion that Ta Chen's sales in this POR should be considered CEP transactions, we find this fact does not relate to the issue of how direct ''back-to-back'' sales were negotiated during the instant review. As we have noted, sales from inventory follow an entirely different course, and are concluded by different individuals, using different pricing formulae, than are Ta Chen's direct ''back-to-back'' sales.

Further, we did not include in our analysis the fact that TCI did not engage in such activities as warranties, advertising, in-house technical assistance and supervision of further manufacturing, as was the case, for example, in Korean Steel III and Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada, 63 FR 12725 (March 16, 1998). Although these types of activities are clearly selling functions, the issue of who performs such activities is only relevant where such activities are in fact performed for the sale of the subject merchandise. In this case, neither TCI nor Ta Chen engaged in such activities with respect to sales of the subject merchandise.[3]

The purpose of this portion of the test is to determine which entity performs the primary selling functions pertaining to the sale of the subject merchandise during the POR. Accordingly, that analysis is conducted on a case-by-case basis and is based upon the actual selling functions performed in each case. In the present case the selling activities performed for the sale of this commodity product, for both Ta Chen and TCI combined, appear to be minimal.

Finally, during this review, we note that TCI engaged in the process of issuing invoices, collecting payment, paying antidumping duty deposits, and taking title to the subject merchandise after entry into the United States. We do not find that these activities alone are sufficient to warrant treatment of such sales as CEP transactions. Rather, consistent with our past precedent in these matters, such activities are fully consistent with those of the selling agent that takes over the sales functions which have been ''relocated geographically from the country of exportation to the United States, where the sales agent performs them.'' Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany, 61 FR 38166 (July 23, 1996).

Comment Two: U.S. Packing Costs

Petitioners charge Ta Chen with understating the cost of packing materials (specifically, wooden crates) used to package shipments for export to the United States. According to petitioners, the Department's Home Market Verification Report notes that this understatement occurred on four of the five sales transactions examined at verification. Petitioners urge the Department to make an upward adjustment to Ta Chen's export packing materials equal to the average percentage difference between the reported material expenses and the actual amounts found at verification.

Also understated, petitioners contend, was Ta Chen's packing labor for export sales. Petitioners note that Ta Chen's supplemental questionnaire response and home market and U.S. sales listings contained revised packing labor costs, with labor costs for home market packing considerably higher than that for U.S. sales. Turning to the Department's verification report, petitioners note that Ta Chen derived these figures using estimates provided by Ta Chen's supervisor for packing, but was unable to provide any documentation or worksheets to support the supervisor's estimates. Petitioners suggest that Ta Chen contradicted these estimates when it admitted at verification that ''export shipping, in fact, requires more steps and takes longer per kilogram than home market shipments.'' Case Brief at 8, quoting the Home Market Verification Report at 21 and 22 (petitioners' emphasis omitted). Thus, petitioners insist, by Ta Chen's own admission the actual packing labor costs for U.S. sales exceed actual packing labor costs for domestic shipments within Taiwan. That statement is consistent with the extra steps (such as packing the subject pipe in wooden crates) required for export shipments. To correct this alleged under-reporting of U.S. packing labor, petitioners argue, the Department should use the ratio of U.S. and home market packing material costs as the basis for adjusting upward Ta Chen's U.S. packing labor expenses.

Ta Chen submits that its records do not permit a breakdown of packing labor by market or product type and, therefore, it simply allocated packing costs over the U.S. and home market weights packed. According to Ta Chen, it included revised packing costs based on an estimate of the relative time spent packing home market and export shipments in its supplemental response as instructed by the Department in its supplemental questionnaire. Ta Chen concedes that export shipments require more packing materials and more steps to pack the merchandise than do shipments within Taiwan. On the other hand, Ta Chen continues, the larger quantities of merchandise packed for export work to reduce the per-kilogram packing costs associated with export sales. As for petitioners' comments concerning wooden crate expenses, Ta Chen did not reply.

[3] Ta Chen Taiwan does provide minimal advertising in the form of product brochures; no other advertising medium is employed either by Ta Chen or by TCI.

Noting that it can ''appreciate'' the Department seeking to determine a more accurate method of calculating packing labor costs (by investigating alternative reporting methodologies in its supplemental questionnaire), Ta Chen expresses ''no objections'' to the Department's use of the data originally submitted with Ta Chen's April 14, 1997 response. Ta Chen does, however, object to petitioners' proposal to recalculate packing labor costs based on the ratio of packing material costs for the respective markets, claiming that such an allocation ''makes no sense'' and has no rational connection to actual packing labor time.

Department's Position

We agree with petitioners on both points. During verification we compared the reported export packing material costs for the wooden crates, reported as data field PACKM1P, to the actual per-kilogram expenses as reflected in Ta Chen's ''Packing & Finished Goods Turn-in Reports.'' For four of the five transactions examined Ta Chen's reported packing material expenses were understated (wooden crate costs for the remaining transaction were overstated). We conclude, therefore, that Ta Chen's allocation methodology for reporting these expenses bears little or no relationship to the manner in which these costs are actually incurred. Therefore, we have recalculated Ta Chen's wooden crate expenses using Ta Chen's own data gathered at verification. Based on these data, we have adjusted PACKM1P upward by the average percentage difference between the actual wooden crate costs reflected in Ta Chen's shipping department records and the values reported in Ta Chen's U.S. sales listing. See the Department's Final Results Analysis Memorandum, July 8, 1998, a public version of which is on file in Room B–099 of the main Commerce building.

With respect to packing labor, as noted in the Ta Chen Verification Report, packing for export requires additional steps, additional materials, and, consequently, additional time. However, Ta Chen used an allocation methodology for its packing labor expenses which apportions a significantly greater amount of these expenses to its home market sales, based upon ''an estimate provided by the supervisor of the packing division.'' Home Market Verification Report at 21. The resultant home market and U.S. packing labor factors do not, as the report notes, ''comport with Ta Chen's actual experience in packing subject merchandise for the respective markets.'' That the report also notes ''no discrepancies with this allocation'' cannot be read as the Department's endorsement of the specific allocation methodology selected. Rather, it indicates that Ta Chen used verifiably accurate figures for total labor expense and total shipments in its allocation, not that the allocation methodology itself was appropriate in this case. In fact, as with the wooden crate expenses, Ta Chen's method of reporting its packing labor expenses bears no relationship to the manner in which Ta Chen actually incurred these expenses. Ta Chen's use of an estimate to allocate packing labor expenses ''does not necessarily mean that [Ta Chen] incurred the expenses differently'' due to shipping for the home market versus for the export market. Tapered Roller Bearings and Parts Thereof, Finished and Unfinished From Japan, 63 FR 2558, 2579 (January 15, 1998) (TRBs From Japan). Rather, the sole support for this allocation is the allocation itself. When we asked officials at Ta Chen to provide some support, in the form of internal time studies, worksheets used by the supervisor in devising the estimate, etc., Ta Chen responded that it had no such documentation. Therefore, we have rejected Ta Chen's reporting of packing labor based upon the unsupported estimate of the packing labor supervisor.

Likewise, while not as egregious, Ta Chen's original packing labor methodology included in its April 14, 1997 response has the effect of understating packing labor costs attributable to export shipments while overstating these costs for home market shipments. We have stated in a different context that we will not reject a respondent's allocation methodologies in favor of the facts otherwise available if (i) a fully-cooperating respondent is unable to report the requested information in a more specific manner *and* (ii) the selected allocation methodology is not unreasonably distortive. See Antifriction Bearings (Other Than Tapered Roller Bearings), and Parts Thereof, From France, *et al.*, 72 FR 2081, 2090 (January 15, 1997); see also TRBs From Japan, 63 FR 2558, 2566 (January 15, 1998). While we believe that Ta Chen has satisfied the first test (Ta Chen's records kept in its ordinary course of business do not readily permit a breakdown of home market versus export packing labor), we cannot accept a resulting allocation methodology which is unreasonably distortive. Allocating this expense so that home market packing labor is equal to, or greater than, export packing labor, while simultaneously acknowledging that the latter is more labor-intensive, is unreasonably distortive.

As to Ta Chen's suggestion that it merely revised its labor costs in response to the Department's request, we reject that assertion. The Department's inquiry on this point, included in its October 9, 1997 supplemental questionnaire, reads:

> It appears as though you have reported the same packing labor costs for both H[ome] M[arket] and U.S. sales while your response indicates that U.S. sales require additional labor (i.e., packing of merchandise into wooden boxes). Please explain and, if necessary, revise your labor costs to reflect this additional service for export sales.

Supplemental Questionnaire at 8.

In response, Ta Chen argued that any differences in packing labor expenses in the two markets would, of necessity, be *de minimis*, but then proceeded to reallocate these expenses in such a fashion as to actually decrease the portion of Ta Chen's labor expenses relating to export shipments. As indicated above, we find that neither of Ta Chen's selected reporting methodologies reflects its actual experience in the packing and shipping of subject merchandise. Therefore, we have recalculated Ta Chen's U.S. packing labor expenses. As facts available, we relied on Ta Chen's own data submitted on the record of this review. We compared the ratio of home market to U.S. packing material costs and applied the resulting ratio to Ta Chen's reported packing labor. For a discussion of the precise calculation of this revised packing labor factor, please see the Department's Final Results Analysis Memorandum, a public version of which is on file in Room B–099 of the main Commerce building.

Comment Three: Import Duties and Cost of Production

Ta Chen imports stainless steel coil to its customs-bonded factory in Tainan where it fashions the stainless steel into finished pipe subject to the order and other merchandise (for example, stainless steel pipe fittings) which is not subject to the order. It also resells some stainless steel coil in the home market. For finished products subsequently sold in Taiwan Ta Chen is liable for import duties (these duties are forgiven if the finished products are exported). Petitioners note that the Department in its Preliminary Results increased U.S. price by the amount of Taiwan import duties because Ta Chen's home market prices included these duties. If, petitioners suggest, Ta Chen's home market prices included import duties on imported stainless steel coil, Ta Chen's cost of production should also reflect

these home market duties to avoid comparison of duty-inclusive home market prices to duty-exclusive costs of production. Petitioners contend that such an approach would be consistent with the Department's treatment of this identical issue in the final results of the 1994–1995 administrative review. Case Brief at 10 and 11, citing Certain Welded Stainless Steel Pipe From Taiwan; Final Results of Administrative Review, 62 FR 37543, 37555 (July 14, 1997) (Stainless Pipe From Taiwan).

Ta Chen responds by confirming that its home market gross unit prices include Taiwan import duties, and suggests that the Department deduct these duties when calculating the net home market price used for comparison to COP. This approach, Ta Chen avers, ''most accurately determines the true profitability of each individual sale.'' Rebuttal Brief at 17. The alternative, i.e., adding the import duties to Ta Chen's reported costs of production, would, Ta Chen insists, result in double-counting of these duties.

Department's Position

We agree with petitioners and with Ta Chen. As we stated in the final results of the 1994–1995 administrative review, ''[w]e have adjusted our calculation of the net home market price used in our COP test to deduct the amount of the import duties.'' Stainless Pipe From Taiwan 62 FR 37543, 37555 (July 14, 1997).

Consistent with Stainless Pipe From Taiwan, we conducted the cost test on a duty-exclusive basis. Thus, no change is required to our final margin computer program because the preliminary program already deducts import duties from the net price used in the cost test. See the Public Version of the Department's Preliminary Analysis Memorandum, December 29, 1997, at Attachment One, line 148.

Comment Four: Duty Drawback

In addition to their comment regarding the treatment of import duties in Ta Chen's cost of production, petitioners argue that Ta Chen is not entitled to an upward ''duty drawback'' adjustment to EP. Petitioners note that unlike in prior reviews, Ta Chen purchased much of the stainless steel coil used to fabricate subject WSSP from domestic sources; the Home Market Verification Report states that a Taiwanese mill was Ta Chen's single largest coil supplier during the POR. Case Brief at 12, quoting the Home Market Verification Report at 10. Furthermore, petitioners maintain, Ta Chen's own questionnaire response indicated that Ta Chen ''does not pay any Taiwan import duties on material used to make pipe.'' *Id.*, quoting Ta Chen's April 14, 1997 response at 70. Petitioners contend that this issue did not arise in prior reviews when Ta Chen imported all of the stainless steel coil used to produce subject merchandise (and, thus, all home market sales of finished pipe were subject to the Taiwanese import duties). In contrast, petitioners argue, in the instant review the record indicates that a portion of Ta Chen's input stainless steel coil came from Taiwanese mills. In light of this change petitioners urge the Department to ''conduct its standard analysis to determine whether Ta Chen meets the requirements for a duty drawback adjustment.''

Petitioners point to Stainless Steel Bar From India, where the Department stated that any duty drawback adjustment would depend upon a finding that (i) the import duty and rebate are directly linked to, and dependent upon, each other, and (ii) the company claiming the adjustment can demonstrate sufficient imports of raw material to account for the claimed drawback received. Case Brief at 13, quoting Stainless Steel Bar From India; Final Results of Antidumping Duty Administrative Review, 63 FR 13622, 13625 (March 20, 1998). According to petitioners, information gathered at verification concerning Ta Chen's purchases of stainless steel coil from domestic and off-shore mills indicates that Ta Chen's imports of stainless steel coil were not sufficient to account for the drawback applicable to Ta Chen's exports. Furthermore, petitioners continue, it is reasonable to assume that Ta Chen used domestic coil to produce subject pipe for sale in the home market precisely because such coil would not be subject to Taiwan import duties. Because Ta Chen did not meet the Department's requirements for a duty drawback adjustment, petitioners conclude, the Department should deny this adjustment in the final results of this review.

Ta Chen insists it is entitled to a circumstance-of-sale adjustment to account for home market import duties, just as a ''comparable circumstances of sale [sic] adjustment is made for the U.S. import duties Ta Chen pays on its U.S. sales.'' Rebuttal Brief at 17. According to Ta Chen, its section B home market sales listing reflects that, in fact, for most sales the unaffiliated customer paid the duties (and, therefore, Ta Chen reported a value of zero for import duties). In those instances where Ta Chen did pay the duties, it reported these on a per-kilogram basis. Ta Chen notes that its home market gross unit prices are reported inclusive of import duties.

As for petitioners' comments regarding the quantities of stainless steel coil purchased by Ta Chen from domestic and off-shore mills, Ta Chen points out that petitioners failed to note the ''enormous quantity'' of stainless steel coil sold in coil form, i.e., as purchased, by Ta Chen. Furthermore, the figures cited by petitioners demonstrate the stainless steel coil imported by Ta Chen was more than sufficient to account for the volume of pipe Ta Chen sold domestically and for export.

Department's Position

We disagree with petitioners. Welded stainless steel pipe is produced, essentially, from a single raw material: annealed and pickled austenitic stainless steel sheet or plate in coil form. Traditionally Ta Chen sourced all of its stainless steel coil from foreign mills; during the instant period of review as well the vast majority of Ta Chen's coil came from abroad. As Ta Chen's plant is a customs bonded facility, imports of stainless steel coil are not subject to import duties at the time of importation. Import duties are only owed at such time as the finished merchandise enters Taiwan customs territory, i.e., it is sold in the home market. No import duties are collected if the imported raw material is subsequently re-exported, whether in the form of finished pipe or pipe fittings, or in cut-to-length or coil form. Ta Chen's questionnaire responses and the information presented at verification amply demonstrate the nature of these import duties and the manner in which they are assessed. See, e.g., Ta Chen Verification Report at 23 and 24. Further, Ta Chen satisfied the Department as to the amount of such duties (''[w]e traced the total [duties paid] to Ta Chen's monthly import duty for domestic sales report, general ledger, and statement of checking account without discrepancy * * *''). *Id.* at 15. As the Court of International Trade has consistently held, ''there is no requirement that [a] specific input be traced from importation through exportation before allowing drawback on duties paid * * *'' *See, e.g., Far East Machinery Co.* v. *U.S.*, 699 F. Supp. 309, 312 (CIT 1988); see also *LaClede Steel Co.* v. *U.S.*, Slip Op. 94–160 (October 12, 1994) (LaClede Steel). Thus, we are convinced that the import duties and the amount ''not collected by reason of the exportation of the subject merchandise to the United States'' are directly linked to, and dependent upon,

each other. *See* Section 772(c)(1)(B) of the Tariff Act.

As for the second prong of the test, whether there were sufficient imports of raw materials to account for the drawback received, the record evidence, including data obtained during verification, indicates that Ta Chen more than satisfied this requirement. As Ta Chen notes in its rebuttal brief, petitioners' comment fails to take into account the volumes of stainless steel coil that Ta Chen re-sold in coil form in the home market, or subsequently exported in coil form. Nor do petitioners consider the volume of imported and domestic stainless steel coil used to fabricate non-subject merchandise for the domestic and export markets, such as stainless steel pipe fittings. In this case, we believe that we have, as the Court stated in *LaClede Steel*, ''verified that [the respondent] imported sufficient raw materials to account for duty drawback received on exports of pipe.''

Finally, with respect to Ta Chen's statement that it ''does not pay any Taiwan import duties on material used to make pipe,'' the record indicates clearly that Ta Chen does not pay these duties at the time of importation of the stainless steel coil. Rather, these duties are due when the finished product (e.g., welded stainless steel pipe) enters Taiwan customs territory. Thus, we find this case analogous to Certain Welded Carbon Steel Pipes and Tubes From India, where a similar import duty scheme was described as presenting ''the rare situation in which, rather than being rebated as is usually the case, the import duties were actually 'not collected, by reason of the exportation of the subject merchandise to the United States.' '' 62 FR 47632, 47634 (September 10, 1997). As we concluded in that case, so we conclude here: ''[t]his type of program falls within the express language of section 772(c)(1)(B)'' of the Tariff Act. Accordingly, we have accepted Ta Chen's claimed adjustment for duty drawback for these final results.

Comment Five: Effect of Compensating Balances on U.S. Credit Expenses

According to petitioners, Ta Chen's imputed credit expenses for U.S. sales must be increased to include the costs of compensating balances. Petitioners note that the Department's October 9, 1997 supplemental questionnaire and Ta Chen's October 31, 1997 supplemental response both indicated that Ta Chen's reported imputed credit expenses did not take into account these compensating balances. Further, Ta Chen's supplemental response provided the amounts of these compensating balances and the factor necessary to calculate revised imputed credit expenses for U.S. sales. Petitioners urge the Department to implement this revision for the final results of this review.

Ta Chen offered no rebuttal to this comment.

Department's Position

We agree with petitioners and have made the appropriate correction to U.S. credit costs. We did this by multiplying the reported credit amounts on Ta Chen's U.S. sales listing by the revised factor supplied by Ta Chen to account for compensating balances.

Comment Six: Comments on Verification Reports

Ta Chen insists that the completeness of its U.S. sales listing was fully verified through reconciliation of the reported sales values to Ta Chen's audited financial statements, a process used by Ta Chen and accepted by the Department in the past. Ta Chen takes issue with the tone of the U.S. Verification Report which suggests that Ta Chen failed to provide documentation of its reported U.S. sales quantities. According to Ta Chen, its audited financial statements record total sales value, but do not contain any information concerning sales quantities. The Department, Ta Chen avers, has never insisted on a separate confirmation of its sales quantities, once it had reconciled successfully its overall sales value.

Ta Chen also maintains that it provided ample documentation at verification to demonstrate that certain U.S. sales of pipe entered the United States prior to the instant POR and, therefore, properly were excluded from Ta Chen's section C U.S. sales listing.

Contrary to statements in the Ta Chen Verification Report, Ta Chen submits, its packing personnel did not have difficulty bundling and weighing subject pipe and, in any event, the weight figures reported to the Department were taken from records kept in Ta Chen's normal course of business.

With respect to home market sales to one affiliated customer, Blossum, Ta Chen intimates that these sales represented an insignificant portion of Ta Chen's home market sales and, thus, Blossum's downstream sales would not be required for the Department's analysis.

Ta Chen also commented on our description of the verification of home market freight expenses. Ta Chen attributes the uncertainty of one company official as to home market shipping distances to that ''high-level'' official's unfamiliarity with the minutiae of domestic shipping patterns; when the responsible company official addressed the issue, no uncertainty remained. Also, Ta Chen sold its company-owned flatbed truck at the midpoint of this POR. While Ta Chen's home market freight expenses were not reduced by the value of refunded vehicle plate taxes for the six months after Ta Chen sold its truck, Ta Chen suggests that (i) the data exist to permit a recalculation and (ii) any such revision would have a *de minimis* effect. As to fuel costs, Ta Chen takes issue with the Home Market Verification Report's comment that Ta Chen could not document these costs. According to Ta Chen, there were no outstanding, unanswered requests for gasoline receipts or other documentation at the close of verification.

Finally, Ta Chen makes a number of suggestions to correct typographical errors in the reports.

Department's Position

While we agree in essence with many of Ta Chen's comments, we stand by the verification reports as written. With respect to the completeness test, we were unable to verify separately the quantities reported in Ta Chen's U.S. sales listing. However, we did fully reconcile the reported U.S. sales value to Ta Chen's and TCI's audited financial statements and, furthermore, noted no discrepancies in an unusually extensive random check of invoices and purchase orders issued throughout the POR. The Department considers Ta Chen's home market and U.S. sales quantities fully verified. We also agree with Ta Chen that it satisfied the verifiers that certain sales of pipe entered the United States prior to the POR, and that no outstanding questions on this issue remained at the close of verification.

As for the comment on the facility with which Ta Chen's packing personnel handled pipe at the scale, Ta Chen claimed at verification that the weights reported for its home market and U.S. sales listings were based on transaction-specific actual weights obtained, Ta Chen claimed, by weighing each shipment of pipe as it was prepared for dispatch. We asked to see this process in operation and returned to Ta Chen's pipe mill. There Ta Chen personnel mishandled the pipe, had difficulty gathering the proper number of pieces in a single bundle, struggled to fasten the scale's sling to the scale's lift, and, using a two-button switch box, nonetheless lowered the scale when they meant to raise it, and raised it when they meant to lower it. Thus, we

stand by our characterization of this process as ''difficult.''

Ta Chen provided exhaustive explanations of its sales transactions involving Blossom. We have no basis for rejecting Ta Chen's sales to Blossom or for requiring that Ta Chen report Blossom's subsequent home market sales. Similarly, we did not use the downstream U.S. sales through one U.S. customer, Team Alloys, that Ta Chen subsequently acquired, even though Ta Chen reported these downstream sales in a separate section C computer file.

As for home market shipping expenses, we have used the expenses as reported by Ta Chen, and have made no corrections in light of our findings at verification.

Finally, the Department agrees with Ta Chen's suggested typographical clarifications.

Final Results of Review

Based on our review of the arguments presented above, for these final results we have made changes in our margin calculations for Ta Chen. After comparison of Ta Chen's EP to normal value (NV), we have determined that Ta Chen's weighted-average margin for the period December 1, 1994 through November 30, 1995 is 0.10 percent.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and NV may vary from the percentage stated above. The Department will issue appraisement instructions directly to Customs.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of WSSP from Taiwan entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided in section 751(a)(1) of the Tariff Act:

(1) The cash deposit rate for Ta Chen will be zero percent, in light of its *de minimis* weighted-average margin;

(2) For previously reviewed or investigated companies other than Ta Chen, 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 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) If neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 19.84 percent. See Amended Final Determination and Antidumping Duty Order; Certain Welded Stainless Steel Pipe From Taiwan, 57 FR 62300 (December 30, 1992). These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

All U.S. sales by the respondent Ta Chen will be subject to one deposit rate according to the proceeding. The cash deposit rate has been determined on the basis of the selling price to the first unrelated customer in the United States. For appraisement purposes, where information is available, we will use the entered value of the subject merchandise to determine importer-specific appraisement rates.

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 Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(l)(1) of the Tariff Act.

Dated: July 8, 1998.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–18882 Filed 7–15–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071098H]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public meetings; public hearing.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a number of public meetings of its oversight committees and advisory panels in August, 1998 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held between August 3 and August 7, 1998. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: Meetings will be held in South Portland, Maine and Saugus, MA. See **SUPPLEMENTARY INFORMATION** for specific locations.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council;(781) 231–0422. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1036; telephone: (781) 231–0422.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Monday, July 3, 1998, 9:00 a.m.—Joint New England Fishery Management Council Herring Advisory Panel and Atlantic States Marine Fisheries Commission Herring Section Advisory Panel Meeting

Location: Sheraton South Portland, 363 Maine Mall Road, South Portland, ME 04106; telephone: (207) 775–6161.

Development of advice on proposed management measures for inclusion in the Atlantic Herring Fishery Management Plan (FMP).

Monday, July 3, 1998, 2:00 a.m.—Joint New England Fishery Management Council Herring Committee and Atlantic States Marine Fisheries Commission Herring Section Meeting

Location: Sheraton South Portland, 363 Maine Mall Road, South Portland, ME 04106; telephone (207) 775–6161.

Review of public comments and selection of management measures for inclusion in the Atlantic Herring FMP.

Friday, August 7, 1998, 9:30 a.m.—Mid-Atlantic Plans Committee Meeting

Location: New England Fishery Management Council Office conference room, 5 Broadway, Saugus, MA 01906; telephone (781) 231–0422.

Development of recommendations for the following Mid-Atlantic Fishery Management Council and New England

Council FMPs: Atlantic Squid, Mackerel and Butterfish; Summer Flounder and Whiting. These discussions will also include issues related to mackerel joint-venture allocations and discards in the summer flounder fishery.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: July 13, 1998.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–19010 Filed 7–15–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071098G]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's Groundfish Management Team will hold a public meeting.

DATES: The meeting will be held on Monday, August 10, beginning at 1 p.m. and may go into the evening until business for the day is completed. The meeting will reconvene from 8 a.m. to 5 p.m. on Tuesday, August 11, Wednesday, August 12, and Thursday, August 13, 1998.

ADDRESSES: The meeting will be held at NMFS Alaska Fisheries Science Center Facility, 7600 Sand Point Way NE, Room 2079, Building 4, Seattle, WA; telephone: (206) 526–6150.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Jim Glock, Groundfish Fishery Management Coordinator; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The first day of the meeting will be dedicated to reevaluation of the appropriateness of $F_{40\%}$ as the proxy for maximum sustainable yield for rockfish. Agenda items scheduled also include review of recent stock assessments, development of preliminary recommendations for 1999 harvest levels and management measures, inseason management projections, final review of fishery management plan amendments, preliminary preparation of the annual stock assessment and fishery evaluation (SAFE) document, a proposal to allow landing of fish in excess of cumulative limits (overages), lingcod and rockfish allocation, research and data needs, and stocks to be assessed in 1999.

Although other issues not contained in this agenda may come before this Team for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be of formal action during this meeting. Action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. John Rhoton at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: July 13, 1998.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–19011 Filed 7–15–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070998A]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Ad Hoc Allocation Committee will hold a meeting which is open to the public.

DATES: The meeting will begin on Monday, August 3, at 10 a.m. and will continue through Tuesday, August 4, 1998, as necessary.

ADDRESSES: The meeting will be held at the Pacific Fishery Management Council Office, 2130 SW Fifth Avenue, Suite 224, Portland, OR.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Julie Walker, Fishery Management Analyst; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to prepare options for allocation of lingcod and bocaccio rockfish between the recreational and commercial fisheries and between gear sectors of the limited entry fleet. The committee will also discuss longer-term priorities for allocation of other rockfish species. In addition, the committee will discuss alternative groundfish management strategies, such as permit stacking, a shorter limited entry season, and species endorsements. The committee will prepare a report to present to the Council at its September meeting.

Although other issues not contained in this agenda may come before this Committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted those issues specifically identified in the agenda listed in this notice.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. John Rhoton at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: July 10, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–19012 Filed 7–15–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071098E]

Marine Mammals; File No. 738–1454

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Ms. Carole Conway, Genomic Variation Laboratory, Department of Animal Science, Meyer Hall, University of California, Davis, CA 95616–3322, has been issued a permit to import blue whale (*Balaenoptera musculus*) skin samples for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (562/980–4001).

FOR FURTHER INFORMATION CONTACT: Sara Shapiro or Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: On May 13, 1998, notice was published in the **Federal Register** (63 FR 26574) that a request for a scientific research permit to take blue whales (*Balaenoptera musculus*) had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR parts 217–227).

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: July 10, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–19009 Filed 7–15–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061698E]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Mr. Fred Sharpe, Behavioral Ecology Research Group, Department of Biological Sciences, Simon Fraser University, Burnaby, B.C., Canada V5A 1S6,has been issued a permit to take North Pacific humpback whales (*Megaptera novaeangliae*) and killer whales (*Orcinus orca*) for purposes of scientific research.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Director, Alaska Region, NMFS, 709 W. 9th Street, Federal Building, P.O. Box 21668, Juneau, Alaska 99802 (907/586–7012).

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak, 301/713–2289.

SUPPLEMENTARY INFORMATION: On May 11, 1998, notice was published in the **Federal Register** (63 FR 25834) that a request for a scientific research permit to take North Pacific humpback whales and killer whales had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Regulations Governing the Taking, Importing, and Exporting of Endangered Fish and Wildlife (50 CFR part 222).

Issuance of this amendment, as required by the ESA, was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: July 7, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–19013 Filed 7–15–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060898B]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Mason Weinrich, Cetacean Research Unit, P.O. Box 59, Gloucester, MA, has been issued an amendment to scientific research Permit No. 959.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Northeast Region, NMFS, NOAA, One Blackburn Drive, Gloucester, MA 01930–2298 (508/281–9250).

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak, 301/713–2289.

SUPPLEMENTARY INFORMATION: On May 4, 1998, notice was published in the **Federal Register** (63 FR 24530) that an amendment of permit No. 959, issued June 19, 1995 (60 FR 30844), had been requested by the above-named individual. The requested amendment has been issued under the authority of the Marine Mammal Protection Act of1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Regulations Governing the Taking, Importing, and Exporting of Endangered Fish and Wildlife (50 CFR part 222).

Issuance of this amendment, as required by the ESA, was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: July 9, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–19014 Filed 7–15–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Department of the Army

Inland Waterways Users Board

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Section 302 of Public Law (PL) 99–662 established the Inland Waterways Users Board. The Board is an independent Federal advisory committee. Its 11 members are appointed by the Secretary of the Army. This notice is to solicit nominations for six (6) appointments or reappointments to two-year terms that will begin January 1, 1999.

ADDRESSES: Office of the Assistant Secretary of the Army (Civil Works), Department of the Army, Washington, DC 20310–0103. Attention: Inland Waterways Users Board Nominations Committee.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph W. Westphal, Assistant Secretary of the Army (Civil Works) (703) 697–8986.

SUPPLEMENTARY INFORMATION: The selection, service, and appointment of Board members are covered by provisions of Section 302 of PL 99–662. The substance of those provisions is as follows:

a. Selection

Members are to be selected from the spectrum of commercial carriers and shippers using the inland and intracoastal waterways, to represent geographical regions, and to be representative of waterborne commerce as determined by commodity ton-miles statistics.

b. Service

The Board is required to meet at least semi-annually to develop and make recommendations to the Secretary of the Army on waterways construction and rehabilitations priorities and spending levels for commercial navigation improvements, and report is recommendations annually to the Secretary and Congress.

c. Appointment

The operation of the Board and appointment of its members are subject to the Federal Advisory Committee Act (PL 92–463, as amended) and departmental implementing regulations. Members serve without compensation but their expenses due to Board activities are reimbursable. The considerations specified in section 302 for the selection of the Board members, and certain terms used therein, have been interpreted, supplemented, or otherwise clarified as follows:

(1) Carriers and Shippers

The law uses the terms ''primary users and shippers.'' Primary users has been interpreted to mean the providers of transportation services on inland waterways such as barge or towboat operators. Shippers has been interpreted to mean the purchasers of such services for the movement of commodities they own or control. Individuals are appointed to the Board, but they must be either a carrier or shipper, or represent a firm that is a carrier or shipper. For that purpose a trade or regional association is neither a shipper or primary user.

(2) Geographical Representation

The law specifies ''various'' regions. For the purpose of selecting Board members, the waterways subjected to fuel taxes and described in PL 95–502, as amended, have been aggregated into six regions. The are (1) the Upper Mississippi River and its tributaries above the mouth of the Ohio; (2) the Lower Mississippi River and its tributaries below the mouth of the Ohio and above Baton Rouge; (3) the Ohio River and its tributaries; (4) the Gulf Intracoastal Waterway in Louisiana and Texas; (5) the Gulf Intracoastal Waterway east of New Orleans and associated fuel-taxed waterways including the Tennessee-Tombigbee, plus the Atlantic Intracoastal Waterway below Norfolk; and (6) the Columbia-Snake Rivers System and Upper Willamette. The intent is that each region shall be represented by at least one Board member, with that representation determined by the regional concentration of the individual's traffic on the waterways.

(3) Commodity Representation

Waterway commerce has been aggregated into six commodity categories based on ''inland'' ton-miles shown in Waterborne Commerce of the United States. In rank order they are (1) Farm and Food Products; (2) Coal and Coke; (3) Petroleum, Crude and Products; (4) Minerals, Ores, and Primary Metals and Mineral Products; (5) Chemicals and Allied Products; and (6) All other. A consideration in the selection of Board members will be that the commodities carried or shipped by those individuals or their firms will be reasonably representative of the above commodity categories.

d. Nomination

Reflecting preceding selection criteria, the current representation by the six (6) Board members whose terms expire December 31, 1998, is one member representing each of the six regions previously described. Also, these Board members represent three shipper/carriers, one shipper and two carriers.

Three (3) of the six members whose terms expire December 31, 1998, are eligible for reappointment.

Nominations to replace Board members whose terms expire December 31, 1998, may be made by individuals, firms or associations. Nominations will:

(1) State the region to be represented;

(2) State whether the nominee is representing carriers, shippers or both.

(3) Provide information on the nominee's personal qualifications;

(4) Include the commercial operations of the carrier and/or shipper with whom the nominee is affiliated. This commercial operations information will show the actual or estimated ton-miles of each commodity carried or shipped on the inland waterways system in a recent year (or years) using the waterway regions and commodity categories previously listed.

Nominations received in response to last year's **Federal Register** notice, published on July 9, 1997, have been retained for consideration. Renomination is not required but may be desirable.

e. Deadline for Nominations

All nominations must be received at the address shown above no later than August 31, 1998.

Gregory D. Showalter,

Army Federal Register, Liaison Officer.

[FR Doc. 98–19024 Filed 7–15–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement/Draft Environmental Impact Report (DEIS/R) for the Napa River, California, Salt Marsh Restoration Feasibility Study

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

ACTION: Notice of intent.

SUMMARY: The San Francisco District, U.S. Army Corps of Engineers together with its local sponsor, the California State Coastal Conservancy, and the California Department of Fish and Game, are conducting a feasibility study for restoration of salt marshes in areas currently occupied by constructed salt ponds west of the Napa River, Napa and Solano Counties, California. A reconnaissance study has determined that there is a Federal interest in an alternative that would restore four of the seven ponds to tidal marsh while reducing salinity in the remaining three ponds. This alternative would provide substantial ecological benefits, and has the support of the local sponsor and the California Department of Fish and Game.

The Corps of Engineers is the lead agency for this project under the National Environmental Policy Act (NEPA), and the California State Coastal Conservancy is the lead agency under the California Environmental Quality Act (CEQA). The DEIS/R will enable the lead agencies to comply with the requirements of NEPA and CEQA.

FOR FURTHER INFORMATION CONTACT: Mr. Bill DeJager at (415) 977–8670, or at the U.S. Army Corps of Engineers, San Francisco District, 333 Market Street, 7th Floor, San Francisco, CA 94105–2197.

SUPPLEMENTARY INFORMATION: The Napa River, Salt Marsh Restoration Feasibility Study is being conducted under authority of a resolution adopted by the Committee on Public Works and Transportation of the U.S. House of Representatives on September 28, 1994. A reconnaissance study of potential marsh restoration alternatives along the lower Napa River was completed in 1997. This study determined that there is a Federal interest in a marsh restoration project in the study area. A detailed (feasibility) study has subsequently been initiated with the California State Coastal Conservancy to support further Federal participation in the project. The California Department of Fish and Game, while not formally a sponsor, owns the salt ponds under study and is participating in the study.

One alternative was developed for the reconnaissance study, based upon information available at that time. This alternative would initially remove excess salts from all the ponds using controlled flushing through new water control structures. After salt concentrations in the four less-saline ponds reaches levels close to that of San Pablo Bay, the water control structures would be removed and establishment and growth of tidal marshes would be allowed to occur naturally. The remaining three ponds would be retained as saline pond habitat, but with less-saline conditions than at present. Other alternatives could include pumping water through the pond complex to dilute salts, or using treated sewage effluent to dilute the salts.

Due to uncertainties regarding the feasibility and environmental impacts of these alternatives, the first phase of the feasibility study will focus on gathering baseline data, developing restoration objectives, and conducting modeling of existing conditions and potential alternatives. The second phase of the study will develop and analyze specific alternatives for meeting study objectives.

The Corps of Engineers is requesting public input during the preparation of the DEIS/R for this project. All interested Federal, State, and local agencies, Indian tribes, private organizations, and individuals are invited to participate in the environmental scoping process established by Federal regulations.

A scoping meeting will be held at the Napa County Board of Supervisors offices, 1195 Third Street, Room 305, Napa, California on July 21, 1998 at 7:30 P.M. The purpose of the meeting will be to determine the environmental issues of concern to the public that should be addressed by the DEIS/R. A public comment period for the proposal will open on July 17, 1998 and will close on August 17, 1998. The public will have an additional opportunity to comment on proposed alternatives after the DEIS/R is released to the public at a later date.

The DEIS/R will examine environmental issues of public concern arising from the scoping process, and project impacts already known to the Corps. These impacts will include, but are not limited to: wildlife, waterfowl, fisheries, threatened and endangered species, wetlands and mudflats, water quality, recreation, navigation and dredging, aesthetics, law enforcement, construction impacts, and concerns of nearby landowners.

The DEIS/R will disclose the project's compliance with all applicable statutes, rules, and regulations. Included will be coordination with the U.S. Fish and Wildlife Service (FWS) under the Fish and Wildlife Coordination Act and the Endangered Species Act (ESA), coordination with the FWS and the National Marine Fisheries Service under the ESA, and consultation with the State of California under the Coastal Zone Management Act, Clean Water Act, and Clean Air Act.

The California State Coastal Commission is issuing a separate notice regarding compliance with the requirements of CEQA. The aforementioned DEIS scoping meeting will also serve as a scoping meeting for the purposes of CEQA.

Peter T. Grass,

Lieutenant Colonel, Corps of Engineers, District Engineer.

[FR Doc. 98–19022 Filed 7–15–98; 8:45 am]

BILLING CODE 3710–19–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) To Evaluate a Permit Application by The Port Authority of New York and New Jersey To Construct and Operate a Confined Dredged Material Disposal Facility (Sub-Channel Disposal Cells) in Newark Bay, NJ

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

ACTION: Notice of Intent.

SUMMARY: The Port Authority of New York and New Jersey has submitted an application for a Department of the Army (DA) permit to construct and operate a confined dredged material disposal facility by constructing disposal cells beneath the existing Federal Navigation Channel (Project No. 64) in Newark Bay. The creation of a facility for the disposal of dredged material by dredging and discharging of dredged material into waters of the United States requires a Department of the Army Permit pursuant to Section 10 of the Rivers and Harbors Appropriation Act of 1899 (33 U.S.C. 403), Section 404 of the Clean Water Act (33 U.S.C. 1344), and Section 103 of the Marine Protection, Research and Sanctuaries Act (33 U.S.C. 1413). An Environmental Impact Statement (EIS) will assist the U.S. Army Corps of Engineers (USACE) in determining whether to issue a permit for the project under these authorities. This determination will take place in accordance with the USACE policies and procedures for implementing the National Environmental Policy Act (NEPA) (42 U.S.C. 4332), as set forth at Title 33 of the Code of Federal Regulations (CFR) Part 230, and for review of applications for DA permits, set forth at 33 CFR Part 325. This notice of intent is published as required by the President's Council on Environmental Quality regulations implementing NEPA, set forth at 40 CFR parts 1500–1508.

FOR FURTHER INFORMATION CONTACT:

Mr. Joseph J. Seebode, Chief, Regulatory Branch, New York District Corps of Engineers, 26 Federal Plaza, Room 1937, New York, New York 10278–0090, Telephone (212) 264–3996.

SUPPLEMENTARY INFORMATION:

1. Project Description

The project proposed by the applicant, the Port Authority of New York and New Jersey, would provide a subaqueous site for confined disposal of material dredged from the Port of New York and New Jersey. The proposed work would include dredging sediment from areas ranging form approximately 10 to 30 acres within the footprint of the existing Federal Navigation Channel in Newark Bay, for the purpose of constructing sub-channel disposal cells. Cell sizes and capacities would vary depending upon their exact locations. The maximum proposed cell depth would be approximately 90 feet below mean low water (MLW), or to bedrock, if bedrock is encountered at a shallower depth. Cell capacities would be approximately 75% of the volume of dredged sediment, based upon an anticipated 1.2 ''bulking factor''. Cells would be constructed on an as needed basis, but only one (1) cell would be operational at any time. Up to 20 cells are proposed for construction with a total capacity of approximately 10,000,000 cubic yards.

Accumulated surface and near-surface sediment dredged during construction, which has been exposed to contemporary or historic sources of contamination, would be disposed of at the Newark Bay Confined Disposal Facility or in a previously constructed cell. Underlying sediment would be utilized for some type of beneficial use, such as remediation material at the Historic Area Restoration Site (HARS) off Sandy Hook, New Jersey, construction material for restoration or remediation projects, or in wetland creation/enhancement projects in the New York-New Jersey region.

The proposed cells would be filled to 2.5 feet below the authorized channel depth, through restricted point source discharges of dredged materials from the Port of New York and New Jersey. Natural sedimentation would return the site to the authorized channel depth.

2. Alternatives

Decision options available to the District Engineer are issue the permit, issue the permit with modifications or conditions, or deny the permit. In addition to the no action alternative, the alternatives to be considered within the EIS will include the following:

a. Alternative sites and site configurations for subaqueous disposal of dredged material.

b. Alternative methods of dredged material disposal:

(1) Containment Islands and Areas (land extension).

(2) Upland Disposal.

(3) Wetland Creation.

(4) Incineration and other decontamination technologies.

(5) Disposal at independent contractor's option.

3. EIS Scoping

As part of the EIS scoping process, comments on the proposed scope of the EIS will be accepted until the expiration of 45 calendar days after the publication of this Notice of Intent in the **Federal Register.** All comments should be addressed to the indicated contact person. In addition to receiving written comments, the USACE will receive oral comments during a public scoping meeting to be scheduled during the latter part of the scoping period. Formal notice of this meeting will be made through mailings and/or legal notices in newspapers.

4. Public Participation in the EIS Process

Creation of the EIS process will provide opportunities for full participation by interested state and local agencies, as well as other interested organizations and the general public. These opportunities will include public meetings and information sessions. All interested parties are encouraged to submit their names and addresses to the contact person indicated above for inclusion on the EIS distribution list and any related public notices.

5. Federal Agency Participation in the EIS Process

Full opportunity for federal agency participation will be provided. Federal agencies with an interest in this EIS effort are invited to participate as cooperating agencies pursuant to 40 CFR 1501.6. Interested federal agencies are requested to indicate their desire to participate to the contact person.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–19023 Filed 7–15–98; 8:45 am]

BILLING CODE 3710–06–M

DEPARTMENT OF ENERGY

Notice of Reissuance of Solicitation for Financial Assistance Number DE–PS07–98ID13651—Industrial Process Control With Laser-Based Ultrasonics

AGENCY: Idaho Operations Office, DOE.

SUMMARY: This is a reissuance of DE–PS07–98ID13651. The U.S. Department of Energy (DOE), Idaho Operations Office (ID) is seeking applications for cost-shared research and development of Laser-Based Ultrasonic technologies that will enhance economic competitiveness, reduce energy consumption and reduce environmental impacts of the steel industry. The objective of the solicitation is to develop and use an integrated laser ultrasonic system for in-process manufacturing applications in the U.S. steel industry via: (1) Development of an integrated sensor system to combine the use of laser ultrasonics with other measurement tools to meet the in-process monitoring requirements for accuracy and reproducibility; and (2) installation and use of this integrated system in an industrial process demonstrating the cost-savings utility to the industry. A total of $1,500,000 in federal funds ($550,000 in fiscal year 1998, $500,000 in fiscal year 1999, and $450,000 in fiscal year 2000) is expected to be available to fund this effort. DOE anticipates making a single award with a duration of three years or less. A minimum of 30% non-federal cost-share is required for research and development and a minimum of 50% non-federal cost-share is required for later demonstration and process evaluation. Collaborations between industry, university, and Federal Laboratory participants are encouraged.

FOR FURTHER INFORMATION CONTACT: T. Wade Hillebrant, Contract Specialist; Procurement Services Division, U.S. DOE, Idaho Operations Office, 850 Energy Drive, MS 1221, Idaho Falls, ID 83401–1563; telephone (208) 526–0547, e-mail—hillebtw@id.doe.gov.

SUPPLEMENTARY INFORMATION: The statutory authority for the program is the Federal Non-Nuclear Energy Research and Development Act of 1974 (P.L. 93–577). The Catalog of Federal Domestic Assistance (CFDA) Number for this program is 81.086. The solicitation text is posted on the ID Procurement Services Division home page and may be accessed using Universal Resource Locator address at http://www.id.doe.gov/doeid/solicit.html. This site also includes a link to the report of the workshop on Industrial Applications of Laser Ultrasonics. The Application Instruction

package forms (No.'s 1 through 6 and 7 if applicable) may be accessed at http://www.id.doe.gov/doeid/application.html. Sources intending to propose should send a notice of intent to propose to Mr. Hillebrant (point of contact listed above) by July 15, 1998. Deadline for receipt of applications is July 31, 1998, with additional time allowed for cost share commitment information submittal. Hard copies of the solicitation and the application forms may also be requested from Mr. Hillebrant.

Issued in Idaho Falls, Idaho, on June 24, 1998.

R. Jeffrey Hoyles,

Director, Procurement Services Division.

[FR Doc. 98–18972 Filed 7–15–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–650–000]

Equitrans, L.P.; Notice of Application

July 10, 1998.

Take notice that on July 2, 1998, Equitrans, L.P. (Equitrans) located at 3500 Park Lane, Pittsburgh, Pennsylvania 15275 filed in the referenced docket an application pursuant to Section 7(b) of the Natural Gas Act (NGA), as amended and Part 157 of the Federal Energy Regulatory Commission's Regulations thereunder (18 CFR Sections 157.7 and 157.18), requesting issuance of a Commission order authorizing Equitrans to effect the sale and transfer to Tri-County Oil & Gas Company (Tri-County) certain of its natural gas gathering facilities comprising the North Littleton gathering system, located in Wetzel and Monongalia Counties, West Virginia, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Equitrans seeks a determination that once conveyed, these facilities will be gathering facilities exempt from the Commission's jurisdiction.

Specifically, Equitrans proposes to abandon and transfer to Tri-County, the North Littleton gathering system consisting of 216 segments of pipe totaling 214,028 feet and ranging from 2 to 16 inches in diameter with each segment less than 2 miles in length and 13 metering stations. Equitrans proposes to sell these facilities to Tri-County for the negotiated amount of $238,744.

Currently, Equitable Gas Company (Equitable), the predominant shipper on the North Littleton system and an affiliate of Equitrans, serves the communities of Burton, Eastview and Hundred, West Virginia as well as 92 rural distribution customers from taps on the system. In addition, Equitable and other third parties ship local production on the system for delivery to Carnegie Interstate Pipeline Company or the transmission system of Equitrans. Equitrans indicates that Tri-County has agreed that none of these arrangements with Equitrans, Equitable and other third party shippers will be discontinued, and that for a period of two years, Tri-County has agreed that the gathering charge to shippers will not exceed the maximun rate for gathering which Equitrans is authorized to charge under its FERC Gas Tariff.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 31, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed with the time required herein or if the Commission on its own review of the matter, finds that a grant of the certificate for the proposal is required by the public convenience and necessity. If the Commission believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Equitrans to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18918 Filed 7–15–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–610–003]

Granite State Gas Transmission, Inc.; Notice of Compliance Filing

July 10, 1998.

Take notice that on June 26, 1998, Granite State Gas Transmission, Inc. (Granite State), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised and original tariff sheets:

First Revised Sheet Nos. 27 through 28
Original Sheet Nos. 29 and 30
First Revised Sheet No. 100
First Revised Sheet No. 183
Original Sheet Nos. 184 through 199

The tariff sheets are filed in compliance with the provisions of the May 27, 1998 certificate order issued in CP96–610–000.[1] Granite State states that the tariff sheets reflect the initial rates for the firm LNG storage and vaporization service approved in the certificate order and the provisions of Rate Schedule LNG–1 for firm service. The filing also includes a proposed Rate Schedule LNG–2 for interruptible peaking storage service and the proposed rates for such service.

Granite State further states that it will file substitute replacement tariff sheets with effective dates not less than 60 days before the date on which the completed and tested storage facility is ready to receive shipments of LNG for injection and storage. Granite State says it will also file, at that time, any revisions to the General Terms and Conditions of its tariff that are necessary to reflect the effect of the two new storage services and any proposed changes in the initial rates, if necessary. Granite State says that it must file an executed contract with Northern Utilities, Inc. for firm peaking storage service under Rate Schedule LNG–1 before construction can commence, as conditioned by the certificate order. Granite State also says that when it submits the executed contract, it will also file the forms of requests for service under Rate Schedules LNG–1 and LNG–2 and the forms of contracts for service in tariff sheet format.

[1] See 83 FERC ¶ 61,194.

The subject sheets will be reviewed as pro forma tariff sheets. A further order will be issued prior to the filing by Granite State of tariff sheets not less than 30 days nor more than 60 days prior to the proposed effective date.

Any person desiring to be heard or to make any protest with reference to said filing should on or before July 31, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18921 Filed 7–15–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–517–001]

NorAm Gas Transmission Company; Notice of Amended Application

July 10, 1998.

Take notice that on July 1, 1998, NorAm Gas Transmission Company (NGT), a subsidiary of NorAm Energy Corporation, whose main office is located at 111 Louisiana Street, Houston, Texas 77210–4455, filed in the referenced docket an amended application pursuant to Section 7(b) of the Natural Gas Act (NGA), as amended and Part 157 of the Federal Energy Regulatory Commission's (Commission) Regulations thereunder (18 CFR 157.7 and 157.18), requesting issuance of a Commission order authorizing NGT to effect the sale and transfer to NorAm Field Services Corporation (NFS) of Line 0–577 and equipment appurtenant thereto, located in Haskell County, Oklahoma and all as more fully set forth in the application which is on file with the Commission and open to public inspection.

NGT seeks a determination that once conveyed, these facilities will be gathering facilities exempt from the Commission's jurisdiction.

Specifically, NGT proposes to abandon and transfer to NFS Line 0–577, a gas supply line that was inadvertently omitted from the original application filed May 12, 1997. Line 0–577 is 10.39 miles of 6-inch diameter pipe that operates at a pressure of 150 psig and carries undehydrated gas. NGT proposes to sell these facilities to NFS for the net book value of the assets at the time of closing, which at this time is estimated to be $339,450.15.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 27, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein or if the Commission on its own review of the matter, finds that a grant of the certificate for the proposal is required by the public convenience and necessity. If the Commission believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for NGT to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18920 Filed 7–15–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–655–000]

Northwest Pipeline Corporation; Notice of Request Under Blanket Authorization

July 10, 1998.

Take notice that on July 6, 1998, Northwest Pipeline Corporation (Northwest), P.O. Box 58900, Salt Lake City, Utah 84158–0900, filed in Docket No. CP98–655–000 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 a new meter station, located in Kittitas County, Washington to accommodate a request for service by Puget Sound Energy, Inc. (Puget), under Northwest's blanket certificate issued in Docket No. CP82–433–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest proposes to construct and operate a new meter station to be named the Kittitas Meter Station, located in Kittitas County, Washington, to accommodate a request by Puget for a new delivery point to serve a new market in the Kittitas, Washington area under authorized transportation agreements.

Northwest states that Northwest and Puget have entered into a Facilities Agreement dated May 19, 1998, where Northwest has agreed to construct and own a new 6-inch tap and appurtenant facilities on its 8-inch Wenatchee Lateral and to design and install electronic flow measurement (EFM) equipment at the proposed meter station. Northwest declares that Puget has agreed to construct and own the remainder of the proposed meter station facilities, which will consist of a 12-inch turbine meter, filter, valves, EFM equipment, and appurtenances, to be constructed on a site acquired by Puget. Northwest states that together the tap and meter facilities will comprise the new Kittitas Meter Station that will be operated by Northwest as part of its open-access transportation system.

Northwest asserts that the delivery capacity of the new Kittitas Meter Station will depend upon the pressure that exists on the Wenatchee Lateral at the time of delivery. Northwest declares that the meter station's projected initial deliveries are estimated to be in the range of 375 Dth per day and the MAOP will be 850 psig.

Northwest states that the estimated cost of installing the new meter station will be approximately $257,050, comprised of approximately $20,000 for the tap facilities and the remainder for the meter facilities, with expenses totally reimbursed by Puget.

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.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18917 Filed 7–15–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–765–000]

ANR Pipeline Company; Notice of Availability of the Environmental Assessment for the Proposed Wisconsin Loop Expansion Project

July 10, 1998.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by ANR Pipeline Company (ANR) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of the proposed Wisconsin Loop Expansion Project facilities including:

- About 11.7 miles of 30-inch-diameter pipeline loop on ANR's existing Wisconsin mainline in Waukesha County, Wisconsin;
- The relocation of an existing pig receiver from ANR's existing Milwaukee Tap and Meter Station No. 10 to a parcel of land adjacent to ANR's existing mainline Station No. 12 in Waukesha County, Wisconsin;
- A valve station at milepost 7.7 along the proposed 30-inch-diameter pipeline loop; and
- A new meter station (Somers Meter Station) at milepost 12.19 along ANR's existing Racine lateral in Kenosha County, Wisconsin.

ANR would transport an additional 116 million cubic feet of natural gas per day to shippers in the Chicago hub markets.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, N.E., Room 2A, Washington, DC 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your comments to: Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.1.
- Reference Docket No. CP97–765–000; and
- Mail your comments so that they will be received in Washington, DC on or before August 7, 1998.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by Section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your comments considered.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18919 Filed 7–15–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11512–000 Oregon]

John H. Bigelow; Notice of Availability of Draft Environmental Assessment

July 10, 1998.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Hydropower Licensing has reviewed the application for a new license for the existing McKenzie Project, and has prepared a Draft Environmental Assessment (DEA) for the project. The project is located on the McKenzie River, in Lane County, Oregon. The DEA contains the staff's analysis of the potential environmental impacts of the project and has concluded that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Room, Room 2A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426.

Any comments should be filed within 45 days from the date of this notice and should be addressed to David P. Boergers, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. For further information, contact Gaylord W. Hoisington, Project Coordinator, at (202) 219–2756.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18923 Filed 7–15–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2685–005]

New York Power Authority; Notice of Availability of Environmental Assessment

July 10, 1998.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order 486, 52 FR 47897), the Commission's Office of Hydropower Licensing reviewed a flood erosion control plan for the Blenheim-Gilboa Project, No. 2685–005. The Blenheim-Gilboa Project is on Schoharie Creek in Schoharie County, New York. An Environmental Assessment (EA) was prepared for the flood erosion control plan. The EA finds that approving the plan would not constitute 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 viewed in the Public Reference Branch, Room 2A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426.

Comments should be addressed to David P. Boegers, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Please affix Project No. 2685–005 to all comments. For further information, please contact the project manager, Ms. Monica Maynard, at (202) 219–2652.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18916 Filed 7–15–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1025–020 Pennsylvania]

Safe Harbor Water Power Corporation; Notice of Availability of Environmental Assessment

July 10, 1998.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order 486, 52 F.R. 47897), the Commission's Office of Hydropower Licensing has reviewed the application for license amendment for the Safe Harbor Hydroelectric Project, No. 10255–020. The Safe Harbor Project is located on the Susquehanna River in York and Lancaster Counties, Pennsylvania. The licensee is proposing to raise the normal maximum forebay elevation by 0.8 ft., from Elevation 227.2 ft. to Elevation 228.0 ft. Raising the forebay elevation can be completed operationally, and would not require any modifications to project structures. A Draft Environmental Assessment (DEA) was prepared, and the DEA finds that approproving the amendment application would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Commission's Reference and Information Center, Room 2A, 888 First Street, N.E., Washington, D.C. 20426.

Please submit any comments within 30 days from the date of this notice. Any comments, conclusions, or recommendations that draw upon studies, reports, or other working papers of substance should be supported by appropriate documentation.

Comments should be addressed to David P. Boergers, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Please affix Project No. 6375–006 to all comments. For further information, please contact Ms. Hillary Berlin, at (202) 219–0038.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18922 Filed 7–15–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP98–61–000 and RP98–226–000]

Koch Gateway Pipeline Company; Notice of Technical Conference

July 10, 1998.

In the Commission's order issued on June 19, 1998, in the above-captioned proceeding, 83 FERC ¶ 61,301 (1998), the Commission ordered that a technical conference be convened to resolve issues raised by the filing. The conference to address the issues has been scheduled for July 29, 1998, at 10:00 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18915 Filed 7–15–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6124–8]

Access to Confidential Business Information By Booz-Allen, & Hamilton, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is authorizing Booz-Allen, & Hamilton, Inc. to participate in reviews of selected Superfund cost recovery documentation and records management. During the review, the contractor will have access to information which has been submitted to EPA under section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Some of this information may be claimed or determined to be Confidential Business Information (CBI).

DATES: The contractor (Booz-Allen, & Hamilton, Inc.) will have access to this data until July 23, 1998.

ADDRESSES: Send or deliver, written comments to Veronica Kuczynski, U.S. Environmental Protection Agency, Office of the Comptroller (3PM30), 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Veronica Kuczynski, Office of the Comptroller, (3PM30), 1650 Arch Street, Philadelphia, Pennsylvania 19103, Telephone (215) 814–5169.

SUPPLEMENTARY INFORMATION: Under Contract 68–W4–0010, Work Assignment #ESS026, Booz-Allen, & Hamilton, Inc. will be conducting an on-site review of the procedures and systems currently in place for compliance with Superfund cost recovery and record keeping requirements in the State of Virginia. This review involves conducting transaction testing to evaluate recipient conformance with applicable regulations and acceptable business practices and documenting findings. The contractor will examine transactions for the following:

(1) Expenditures Review: expenditure documentation such as expense reports, timesheets, and purchase requests from the point of origination to the point of payment

to determine compliance with such requirements as site-specific accounting data, authorizing signature and reconciliation of timesheets to expense reports.

(2) Financial Reports: review financial drawdowns, Financial Status Reports, and internal status reports, to determine if information is consistent between these documents, if recipient is properly using information, and if the reports are submitted when required.

(3) Record Keeping Procedures: review samples of Superfund documentation to determine the effectiveness of the recipient procedures to manage and reconcile this documentation (focusing on site-specific documentation, retention schedules, and the ability of the recipient to provide EPA with required financial documentation for cost recovery purposes in the specified time frame).

In providing this support, Booz-Allen, & Hamilton, Inc., employees may have access to recipient documents which potentially include financial documents submitted under section 104 of CERCLA, some of which may contain information claimed or determined to be CBI.

Pursuant to EPA regulations at 40 CFR part 2, subpart B, EPA has determined that Booz-Allen, & Hamilton, Inc., requires access to CBI to provide the support and services required under the Delivery Order. These regulations provide for five working days notification before contractors are given access to CBI.

Booz-Allen, & Hamilton, Inc. will be required by contract to protect confidential information. These documents are maintained in recipient office and file space.

Dated: July 7, 1998.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 98–18994 Filed 7–15–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6124–9]

Investigator-Initiated Grants: Request for Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of request for applications.

SUMMARY: This document provides information on the availability of fiscal years 1998 and 1999 investigator-initiated grants program announcements, in which the areas of research interest, eligibility and submission requirements, evaluation criteria, and implementation schedules are set forth. Grants will be competitively awarded following peer review.

DATES: Receipt dates vary depending on the specific research area within the solicitation and are listed below.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, National Center for Environmental Research and Quality Assurance (8703R), 401 M Street, SW, Washington DC 20460, telephone (800) 490–9194. The complete announcement can be accessed on the Internet from the EPA home page: http://www.epa.gov/ncerqa under ''announcements.''

SUPPLEMENTARY INFORMATION: In its Requests for Applications (RFA) the U.S. Environmental Protection Agency (EPA) invites research grant applications in the following areas of special interest to its mission: (1) Futures: Detecting the Early Signals; (2) Airborne Particulate Matter Centers; (3) Endocrine Disruptors (in cooperation with the National Institute of Environmental Health Sciences, Department of the Interior, National Oceanic and Atmospheric Administration, and the Office of Science and Technology Policy); and (4) Children's Vulnerability to Toxic Substances in the Environment. Applications must be received as follows: August 31, 1998, for topic (1); October 28, 1998, for topic (2); September 16, 1998, for topic (3); and September 30, 1998, for topic (4).

The RFAs provide relevant background information, summarize EPA's interest in the topic areas, and describe the application and review process.

Contact persons for the Futures RFA are Roger Cortesi (cortesi.roger@epamail.epa.gov), telephone 202–564–6852, and Robert Menzer (menzer.robert@epamail.epa.gov), telephone 202–564–6849. Contact person for the Airborne Particulate Matter Centers RFA is Deran Pashayan (pashayan.deran@epamail.epa.gov), telephone 202–564–6913. Contact persons for the Endocrine Disruptors RFA are EPA: David Reese (reese.david@epamail.epa.gov), telephone 202–564–6919, and Robert Menzer; NIEHS: Gwen Collman (collman@niehs.nih.gov), telephone 919–541–4980, and Jerry Heindel (heindel__j@niehs.nih.gov), telephone 919–541–0781; DOI: Michael Mac (michael__mac@usgs.gov), telephone 703–648–4073; and NOAA: Teri Rowles (teri.rowles@noaa.gov), telephone 301–713–2322. Contact person for the Children's Vulnerability RFA is Chris Saint (saint.chris@epamail.epa.gov), telephone 202–564–6909.

Dated: June 30, 1998.

Deborah Y. Dietrich,

Acting Assistant Administrator for Research and Development.

[FR Doc. 98–18993 Filed 7–15–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6125–2]

Announcement of a Joint Application Design Meeting on the Development of Public Access Component of the National Contaminant Occurrence Database

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of a Joint Application Design (JAD) meeting on the development of public access component of the National Contaminant Occurrence Database (NCOD).

SUMMARY: The U.S. Environmental Protection Agency (EPA) has scheduled a two-day public meeting on EPA's development of public access component of the NCOD. The focus of this meeting will be to capture the design and user interface requirements of NCOD users in the public arena. The meeting will be open to any interested parties. EPA encourages the full participation of stakeholders throughout this process. Of particular interest for this meeting are potential NCOD users from educational institutions, state and local governments, the general public, and anyone that does not have access to the EPA Local Area Network (LAN). Providing the information within the NCOD to the public in a readily accessible format is required by the 1996 amendments to the Safe Drinking Water Act (SDWA).

DATES: The stakeholder meeting on the Joint Application Design of the public access component of the NCOD will be held on August 17–18, 1998, from 9 a.m. to 4 p.m. EST.

ADDRESSES: U.S. EPA Washington Information Center (WIC), 400 M Street SW, Washington, DC 20460, Conference Room WIC 4 South.

FOR FURTHER INFORMATION CONTACT: For general information about the meeting, please contact Ms. Valerie Love-Smith, U.S. EPA Office of Ground Water and Drinking Water, Mail Code 4606, 400 M Street SW, Washington, DC 2046, (202) 260–5596.

For other information on National Contaminant Occurrence Database,

please contact Charles Job, at the U.S. Environmental Protection Agency, Phone: 202–260–7084, Fax: 202–260–3762.

Members of the public wishing to attend the meeting may register by phone by contacting the Safe Drinking Water Hotline by August 10, 1998 at 1–800–426–4791. Those registered for the meeting will receive background materials prior to the meeting.

SUPPLEMENTARY INFORMATION:

A. Background on the National Contaminant Occurrence Database

The Safe Drinking Water Act Amendments of 1996 (SDWA Amendments, section 126, appendix A) require establishing a NCOD to: (1) Include both regulated and unregulated contaminants; (2) identify contaminants that may be placed on the Contaminant Candidate List; (3) support the Administrator's determinations to regulate contaminants in the future; (4) support the review of existing regulations every six years and of monitoring requirements; (5) make the data base available to the public in readily accessible form; and (6) be assembled by August 1999, and maintained thereafter.

The NCOD is planned to be a collection of data of documented quality on unregulated and regulated chemical, radiological, microbial, and physical contaminants, and other such contaminants likely to occur, in finished, raw and source waters of public water systems (PWS) of the United States and its territories.

B. Request for Stakeholder Involvement

The upcoming meeting deals specifically with EPA's efforts to develop the user interface tools to provide information within the NCOD to the general public. The EPA Office of Ground Water and Drinking Water (OGWDW) sees the involvement of interested parties, representing a variety of perspectives and expertise, as critical to meeting the requirement established in the 1996 SDWA amendments. Specifically, the amendments stipulate the information within the NCOD will be provided to the public in a readily accessible format. This JAD meeting will provide an important opportunity for such involvement. Some anticipated issues for discussion include the following questions:

1. Should the NCOD provide data currently available in other EPA water data systems (e.g., SDWIS, STORET)? Should the NCOD provide products to the public, in addition to the products and queries used to satisfy the internal primary drinking water program goals of the NCOD (e.g., establish and maintain Contaminant Candidate List (CCL); determination to regulate or not regulate future contaminants; review existing regulations; etc.)?

2. What is a ''readily accessible format'? Is INTERNET access enough? What type of non-electronic format is needed?

3. What capabilities are needed by the public: download query results, graphs, charts, tabular results?

4. What, if any, restrictions should be placed on the amount of data a user could electronically download? Should someone be able to download one hundred megabytes of data on a 14400 modem?

5. If electronic access time is restricted, as indicated above, how could data be provided (file type and media) for public use?

EPA has convened this public meeting to hear the views of stakeholders on the development of the public access component of the NCOD. The public is invited to provide comments on the issues listed above or other related issues during the August 17–18, 1998 meeting.

Dated: July 10, 1998.

Elizabeth Fellows,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 98–18992 Filed 7–15–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6125–4]

Interstate Lead Company Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed de minimis settlement and modification of consent decree.

SUMMARY: Under section 122 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the United States Environmental Protection Agency (EPA) has proposed to settle claims for response costs at the Interstate Lead Company (ILCO) Superfund Site located in Leeds, Alabama with the City of Leeds. EPA will consider public comment on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate that the proposed settlement is inappropriate, improper, or inadequate.

DATES: Written comments may be submitted to Mrs. Kim Dao-Vu at the below address on or before August 17, 1998.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed settlement is available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region 4, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303, 404/562–8887.

SUPPLEMENTARY INFORMATION: In addition, the EPA intends to request the United States District Court for the Northern District of Alabama to modify the Consent Decree relating to the ILCO Superfund Site entered in *U.S.* v. *Alpert Iron & Metal, et al*, Case No. CV–97–AR–0001 to add the following parties as Defendants in such matter:

Baker Iron & Metal Company, Inc.
Crown/Battery Mfg. Co. Inc.
D.H. Griffin Wrecking Company, Inc.
Daniell Battery Manufacturing Company, Inc.
Shredders, Inc.
Southern Foundry Supply, Inc.
Southern Scrap Company, Inc.
Taracorp, Inc.

EPA will consider public comment on the proposed modification for thirty (30) days. EPA may withdraw from the proposed modification should such comments disclose facts or considerations which indicate that the proposed settlement is inappropriate, improper, or inadequate. A copy of the Consent Decree is available from Ms. Paula V. Batchelor at above mentioned address. Written comments may be submitted to Mrs. Kim Dao-Vu at the above address within 30 days of the date of publication of this notice.

Dated: June 29, 1998.

Franklin E. Hill,

Chief, Programs Services Branch, Waste Management Division.

[FR Doc. 98–18991 Filed 7–15–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6125–3]

Proposed Settlement Under Section 122(g) of the Comprehensive Environmental Response, Compensation, and Liability Act; Allied Waste Systems, Inc. and Prestige Foods Corporation

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: Notice of De Minimis Settlement: In accordance with section 122(I)(1) of the Comprehensive

Environmental Response, Compensation and Liability Act of 1984, as amended (CERCLA), notification is hereby given of a proposed administrative settlement concerning the Muskego Sanitary Landfill hazardous waste site north of State Highway 24 and east of Crowbar Road in Muskego, Wisconsin. The agreement was proposed by EPA Region 5 on January 12, 1998. Subject to review by the public pursuant to this document, the agreement has been approved by the United States Department of Justice. Allied Waste Services, Inc. and Prestige Foods Corporation have executed binding certifications of their consent to participate in the settlement.

DATES: Comments must be provided on or before August 17, 1998.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, and should refer to: In Re Muskego Sanitary Landfill, Muskego, Wisconsin, U.S. EPA Docket No. V–W–98C–484.

FOR FURTHER INFORMATION CONTACT: Thomas J. Krueger, U.S. Environmental Protection Agency, Office of Regional Counsel, C–14J, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, (312) 886–0562.

SUPPLEMENTARY INFORMATION: EPA is entering into this agreement under the authority of section 122(g) and 107 of CERCLA. Section 122(g) authorizes early settlements with *de minimis* parties to allow them to resolve their liabilities at Superfund sites without incurring substantial transaction costs. Under the proposed settlement, these parties would agree not to sue the United States for any claims arising out of the response actions taken at the Muskego Sanitary Landfill site. In exchange for that covenant, and in consideration of payments these parties have already made toward performance of response actions at the site, EPA would provide a covenant not to sue the settling parties and the contribution protection provided by sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. sections 9613(f)(2) and 9622(g)(5). EPA has determined that the amount of hazardous substances contributed to the site by the proposed settlors, and the toxic and hazardous effects of the hazardous substances contributed to the site by the proposed settlors, is minimal in comparison to other hazardous substances at the site.

The Environmental Protection Agency will receive written comments relating to this agreement for 30 days from the date of publication of this document.

A copy of the proposed administrative settlement agreement may be obtained in person or by mail from the EPA's Region 5 Office of Regional Counsel, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590. Additional background information relating to the settlement is available for review at the EPA's Region V Office of Regional Counsel.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. sections 9601–9675.

David A. Ullrich,

Acting Regional Administrator, Region V.

[FR Doc. 98–18990 Filed 7–15–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[PB–402404–OR; FRL–5799–5]

Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; State of Oregon Authorization Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comments and opportunity for public hearing.

SUMMARY: On March 31, 1998, the State of Oregon submitted an application for EPA approval to administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 402 of the Toxic Substances Control Act (TSCA). This notice announces the receipt of Oregon's application, provides a 45–day public comment period, and provides an opportunity to request a public hearing on the application.

DATES: Comments on the authorization application must be received on or before August 31, 1998. Public hearing requests must be received on or before July 30, 1998.

ADDRESSES: Submit all written comments and/or requests for a public hearing identified by docket control number ''PB–402404–OR'' (in duplicate) to: Barbara Ross, Environmental Protection Agency, Region X, 1200 Sixth Avenue, WCM-128, Seattle, WA 98101.

Comments, data, and requests for a public hearing may also be submitted electronically to: ross.barbara@epamail.epa.gov. Follow the instructions under Unit V. of this document. No information claimed to be Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: Barbara Ross, Regional Lead Coordinator, Environmental Protection Agency, Region X, 1200 Sixth Avenue, WCM-128, Seattle, WA 98101, telephone: (206) 553–1985, e-mail address: ross.barbara@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On October 28, 1992, the Housing and Community Development Act of 1992, Pub. L. 102–550, became law. Title X of that statute was the Residential Lead-Based Paint Hazard Reduction Act of 1992. That Act amended TSCA (15 U.S.C. 2601 *et seq.*) by adding Title IV (15 U.S.C. 2681–92), entitled ''Lead Exposure Reduction.''

Section 402 of TSCA authorizes and directs EPA to promulgate final regulations governing lead-based paint activities in target housing, public and commercial buildings, bridges, and other structures. Those regulations are to ensure that individuals engaged in such activities are properly trained, that training programs are accredited, and that individuals engaged in these activities are certified and follow documented work practice standards. Under section 404, a State may seek authorization from EPA to administer and enforce its own lead-based paint activities program.

On August 29, 1996 (61 FR 45777) (FRL–5389–9), EPA promulgated final TSCA section 402/404 regulations governing lead-based paint activities in target housing and child-occupied facilities (a subset of public buildings). Those regulations are codified at 40 CFR part 745, and allow both States and Indian Tribes to apply for program authorization. Pursuant to section 404(h) of TSCA, EPA is to establish the Federal program in any State or Tribal Nation without its own authorized program in place by August 31, 1998.

States and Tribes that choose to apply for program authorization must submit a complete application to the appropriate Regional EPA Office for review. Those applications will be reviewed by EPA within 180 days of receipt of the complete application. To receive EPA approval, a State or Tribe must demonstrate that its program is at least as protective of human health and the environment as the Federal program, and provides for adequate enforcement (section 404(b) of TSCA). EPA's regulations (40 CFR part 745, subpart Q) provide the detailed requirements a State or Tribal program must meet in order to obtain EPA approval.

A State may choose to certify that its lead-based paint activities program meets the requirements for EPA approval, by submitting a letter signed by the Governor or Attorney General stating that the program meets the requirements of section 404(b) of TSCA. Upon submission of such certification letter, the program is deemed authorized. This authorization becomes ineffective, however, if EPA disapproves the application.

Pursuant to section 404(b) of TSCA, EPA provides notice and an opportunity for a public hearing on a State or Tribal program application before authorizing the program. Therefore, by this notice EPA is soliciting public comment on whether Oregon's application meets the requirements for EPA approval. This notice also provides an opportunity to request a public hearing on the application. If a hearing is requested and granted, EPA will issue a **Federal Register** notice announcing the date, time, and place of the hearing. EPA's final decision on the application will be published in the **Federal Register**.

II. State Program Description Summary

The following summary of the State of Oregon's proposed program has been provided by the applicant:

On March 31, 1998, Oregon State Health Division applied to EPA for authorization to administer and enforce a State Lead-based Paint Program. The Lead-based Paint Program is administered by the Oregon Health Division who shares responsibilities for certification and for enforcement with the Construction Contractors Board (CCB).

The purpose of the Oregon State lead program is to protect the public from the hazards of improperly conducted lead-based paint activities. The program is designed to protect families from exposure to lead in paint, dust, and soil. The lead program ensures that contractors claiming to know how to inspect, assess, or remove lead-based paint, dust or soil are well-qualified, trained, and certified to conduct these activities. Training and certification is required to ensure the proficiency of contractors who offer to conduct lead-based paint inspection, risk assessment and abatement services in residences and day care centers. Accreditation is required to ensure that training programs provide quality instruction in current and effective work practices.

No person or firm may perform lead-based paint services in target housing or child-occupied facilities without first receiving certification. Lead-based paint services include lead paint inspections and risk assessments, and the design and application of lead paint hazard reduction (abatement) operations. Work practice standards are required to ensure that lead-based paint activities are conducted safely, reliable, and effectively.

The Lead-based Paint Program is administered by the Oregon Health Division (the Division). This agency shares responsibilities for certification and for enforcement with the Construction Contractors Board (CCB) (ORS 701.500; 701.505; 701.510; 701.990, 701.992; 431.920).

Rules for the certification of individuals and firms engaged in lead-based paint activities (OAR 333-069) were promulgated on May 1, 1997. These rules describe the requirements for certification of individuals and firms offering or providing lead-based paint services in Oregon. No person or firm may perform lead-based paint services in target housing or child occupied facilities without first receiving certification. Lead-based paint services include lead paint inspections and risk assessments, and the design and application of lead paint hazard reduction (abatement) operations. Work practice standards for these activities are described in the rules. The Division requires a 24–hour written notice prior to the commencement of an abatement project.

The certification process includes licensure by both the Division and CCB. The Division certifies individuals and firms. The CCB licenses individuals and registers and provides firms with a lead endorsement. Certified individuals may conduct lead-paint activities only for certified and registered firms. Certified and registered firms may only hire certified and licensed individuals to conduct lead-paint activities. Candidates for certification must pass a third-party qualifying examination administered by the Division. A schedule of fees for certification and renewal in respective lead paint disciplines is described. The rules for certification grant the Division the authority to deny, suspend, or revoke certification.

Rules for the Accreditation of Training Programs (OAR 333-068) were promulgated on December 18, 1997. No person shall provide, offer, or claim to provide an accredited lead-based paint activities course unless the person has received accreditation or provisional accreditation from the Division. The Division will accept only training provided by a Division accredited training provider as a qualification for certification. These rules provide for the accreditation of providers of lead-based paint training courses. Accreditation requirements set standards for staff qualifications, operations, curriculum design, course content, and instructional methods.

These rules for accreditation grant the Division the authority to deny, suspend, revoke or modify a provider's accreditation. A schedule of fees for accreditation and renewal of training course is described.

Enforcement and compliance activities will be carried out jointly by the Division and the CCB. The CCB, in its roles as a consumer protection agency, regularly responds to tips and complaints; conducts field investigations; assesses flexible remedies (beginning with oral and written warnings through revocation of registration); issues notices and subpoenas; holds hearings; and assesses civil penalties. The enabling legislation for Oregon's lead program also makes provision for criminal penalties: violation of the statutes is a misdemeanor. Criminal prosecution is initiated through the state office of the Attorney General.

The Division will support the CCB by: (1) Forwarding tips and complaints, (2) initiating case development for targeted inspections pursuant to a required abatement notice, and (3) providing investigative assistance, particularly in the gathering of lead paint samples.

The Division and the CCB will also work together on the development of a training program for investigative and field staff and on compliance assistance activities. With regard to the latter objective, the CCB will assist the division in accessing the communication channels that the former maintains for informing and educating the regulated community.

III. Federal Overfiling

TSCA section 404(b) makes it unlawful for any person to violate, or fail or refuse to comply with, any requirement of an approved State or Tribal program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of an authorized State or Tribal program.

IV. Applicability of Regulatory Assessment Requirements

EPA's actions on State or Tribal lead-based paint activities program applications are informal adjudications, not rules. Therefore, the requirements of the Regulatory Flexibility Act (RFA, 5 U.S.C. 601 *et seq.*), the Congressional Review Act (5 U.S.C. 801 *et seq.*), Executive Order 12866 (''Regulatory Planning and Review,'' 58 FR 51735,

October 4, 1993), and Executive Order 13045 (''Protection of Children from Environmental Health Risks and Safety Risks,'' 62 FR 1985, April 23, 1997), do not apply to this action. In addition, this action does not contain any Federal mandates, and therefore is not subject to the requirements of the Unfunded Mandates Reform Act (2 U.S.C. 1531-1538) or Executive Order 12875 (''Enhancing the Intergovernmental Partnership,'' 58 FR 58093, October 28, 1993). Finally, this action does not contain any information collection requirements and therefore does not require review or approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

V. Public Record and Electronic Submissions

The official record for this action, as well as the public version, has been established under docket control number ''PB–402404–OR.'' Copies of this notice, the State of Oregon's authorization application, and all comments received on the application are available for inspection in the Region X office, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket is located at the EPA Region X Library, Environmental Protection Agency, 1200 Sixth Avenue, OMP-104, Seattle, WA.

Commenters are encouraged to structure their comments so as not to contain information for which Confidential Business Information (CBI) claims would be made. However, any information claimed as CBI must be marked ''confidential,'' ''CBI,'' or with some other appropriate designation, and a commenter submitting such information must also prepare a nonconfidential version (in duplicate) that can be placed in the public record. Any information so marked will be handled in accordance with the procedures contained in 40 CFR part 2. Comments and information not claimed as CBI at the time of submission will be placed in the public record.

Electronic comments can be sent directly to EPA at: ross.barbara@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number ''PB–402404–OR.'' Electronic comments on this document may be filed online at many Federal Depository Libraries. Information claimed as CBI should not be submitted electronically.

Authority: 15 U.S.C. 2682, 2684.

List of Subjects

Environmental protection, Hazardous substances, Lead, Reporting and recordkeeping requirements.

Dated: June 30, 1998.

Chuck Clarke,

Regional Administrator, Region X.

[FR Doc. 98–18989 Filed 7–15–98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2283]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding

July 9, 1998.

Petitions for reconsideration and clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800. Oppositions to these petitions must be filed July 31, 1998. See Section 1.4(b)(1) of the Commission's rule (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses (WT Docket No. 97–82).

Number of Petitions Filed: 11.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–18975 Filed 7–15–98; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

Proposed Projects 1. Analysis of Employer Group Long-Term Care Insurance—New—The Office of Assistant Secretary for Planning and Evaluation is planning to survey employers offering group long-term care insurance in order to identify current products and best practices in the employer long-term care insurance market.

Respondents: State or local governments, Businesses or other for-profit—Burden Information for Insurance Companies.

Number of Respondents: 11.

Burden per Response: 170 minutes.

Total Burden for Insurance Companies: 31 hours—Burden Information for Employers.

Number of Respondents: 125.

Average Burden per Response: 85 minutes.

Total Burden for Employers: 177 hours.

Total Burden: 208 hours.

OMB Desk Officer: Allison Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue S.W., Washington, DC 20201. Written comments should be received within 30 days of this notice.

Dated: July 8, 1998.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 98–18875 Filed 7–5–98; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of a Cooperative Agreement With the National Latino Children's Institute

The Office of Minority Health (OMH), Office of Public Health and Science,

announces that it will enter into an umbrella cooperative agreement with the National Latino Children's Institute (NLCI). This cooperative agreement will establish the broad programmatic framework in which specific projects can be funded as they are identified during the agreement period.

The purpose of this cooperative agreement is to assist NLCI to expand and enhance its activities aimed at improving the general welfare of Latino children throughout the country in areas such as health promotion, disease prevention, and education. Future projects are expected to focus on programs and policies that will strive to eliminate health and socio-economic disparities that affect Hispanic children.

OMH will provide consultation, including administrative and technical assistance, as needed, for the execution and evaluation of all aspects of this cooperative agreement. OMH will also participate and/or collaborate with the awardee in any workshops or symposia to exchange current information, opinions, and research findings during this agreement.

Authorizing Legislation

This cooperative agreement is authorized under Section 1707(d)(1) of the Public Health Service Act.

Background

Assistance will be provided only to the National Latino Children's Institute (NLCI). No other applications are solicited. NLCI is uniquely qualified to administer this cooperative agreement because it has:

1. Focused the nation's attention on policies, programs, and community initiatives that lead to the full and health development of Latino children;
2. Furnished training and technical assistance to programs and policies that value Hispanic youth, such as organizing and sponsoring an annual youth summit that provides leadership experience to young Latinos;
3. Promoted and implemented the National Latino Children's Agenda (NLCA) that encompasses health, environment, economic, and educational conditions of Hispanic children as a means of improving their overall quality of life;
4. Helped build healthy communities by conveying the most effective strategies for accessing and impacting the Latino population;
5. Carried out the principles of the NLCA in local communities in partnership with corporations, community-based organizations, federal agencies, youth, and families that are committed to seeking solutions to the many problems young Latinos face and to act expeditiously to improve their life conditions;
6. Sponsored and collaborated with local and nationwide initiatives that create policies and services respectful of Latino values and language;
7. Identified and selected La Promesa community programs that have demonstrated how the wise and efficient use of culture, language, and values can improve services to the Latino population and serve as models that may be replicated throughout the nation; and
8. Developed a collaborative network of local community work groups and organizations recognized as La Promesa model youth programs, among others, to whom it provides access to information services on policies and programs affecting Latino children.

This cooperative agreement will be awarded in FY 1998 for a 12-month budget period within a project period of 5 years. Depending upon the types of projects and availability of funds, it is anticipated that this cooperative agreement will receive approximately $50,000 to $100,000. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Where To Obtain Additional Information

If you are interested in obtaining additional information regarding this cooperative agreement, contact Mr. Guadalupe Pacheco, Office of Minority Health, 5515 Security Lane, Suite 1000, Rockville, Maryland 20852 or telephone (301) 443–5084.

The Catalogue of Federal Domestic Assistance number is 93.004.

Dated: July 1, 1998.

Clay E. Simpson Jr.,

Deputy Assistant Secretary for Minority Health.

[FR Doc. 98–19008 Filed 7–15–98; 8:45 am]

BILLING CODE 4166–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS) Executive Subcommittee.

Time and Dates: 9:00 a.m.–4:00 p.m. July 22, 1998.

Place: Room N–502, State of Illinois Building, 160 N. LaSalle Street, Chicago, Illinois.

Status: Open.

Purpose: The Executive Subcommittee of the National Committee on Vital and Health Statistics will hold a meeting on July 22, 1998 in Chicago. At the meeting, the Subcommittee will review the status of current work plans and progress, and plan future priorities and activities. The Subcommittee also is expected to plan the agenda for the upcoming September and November 1998 meetings of the full committee.

Contact person for more information: Substantive information as well as an agenda for the meeting and a roster of committee members may be obtained by visiting the NCVHS website (http://aspe.os.dhhs.gov/ncvhs), where an agenda will be posted prior to the meeting. You may also call James Scanlon, NCVHS Executive Staff Director, Office of the Assistant Secretary for Planning and Evaluation, DHHS, Room 440–D. Humphrey Building, 200 Independence Avenue S.W., Washington, D.C. 20201, telephone (202) 690–7100, or Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 436–7050.

Dated: July 8, 1998.

James Scanlon,

Director, Division of Data Policy.

[FR Doc. 98–18876 Filed 7–15–98; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Government-Owned Inventions; Availability for Licensing

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

The inventions named in this notice are owned by agencies of the United States Government and are available for licensing in the United States (U.S.) in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to Thomas E. O'Toole, M.P.H., Licensing and Marketing Specialist, Technology Transfer Office, Centers for Disease Control and Prevention (CDC), Mailstop

E–67, 1600 Clifton Rd., NE., Atlanta, GA 30333, telephone (404) 639–6270; facsimile (404) 639–6266. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Detection and Identification of Non-polio Enteroviruses

Kilpatrick, David R.
Filed 2 October 96
Serial No. 60/027, 353 (ref# I–001–96)

This invention allows the diagnosis, detection, and differentiation of clinical paralysis cases due to polioviruses. A new and novel method for designing polymerase chain reaction (PCR) primes was developed to differentiate between the three poliovirus serotypes. This method has been further developed to produce PCR primers capable of differentiating the 60+ serotypes of nonpolio enteriviruses.

Generation of Viral Transfectants Using Recombinant DNA-Derived Nucleocapsid Proteins

Shaw, Michael W.
Filed 1 May 96
Serial No. 60/017,907 (CDC Ref# I–002–96)

This invention provides a method of producing viral transfectants that eliminates the need for purified RNP complexes or for purified viral RNA polymerases. The methods of this invention thus dramatically simplify the preparation of viral transfectants. The development of reverse genetics for influenza viruses has allowed the direct manipulation of virion gene products and the creation of entirely new recombinant viruses not seen in nature.

Nucleic Acid Assay for the Detection and Differentiation of Three Chlamydia Species

Messemer, Trudy
Filed 5 September 96
Serial No. 60/025, 509 (Ref# I–006–96)

This invention provides a novel assay for easily and readily detecting three important Chlamydia sp., i.e., C. trachormatis, C. psittaci, and C. pneumoniae. These three species may be detected and differentiated in the same sample aliquot at the same time through the use of amplification primers targeted to the 16s rRNA gene specific for each of the species. Additionally, even though multiple targets are used, the assay described is highly sensitive and specific consistently.

Inhibitors of Casein Kinase II (Protein Kinase CK2) Inhibit HIV–1 Replication

Critchfield, William
Filed 16 January 98
Serial No. (Ref# I–012–96)

This invention provides compositions and methods which are effective in inhibiting the activity of specific cellular components associated with viral replication, specifically protein kinase enzymes such as casein kinases. These compositions are easily administered by oral, subcutaneous and intravenous routes, and can be given in dosages that are safe, and provide inhibition of viral replication. The present invention provides a method of treating mammalian diseases mediated by viral infection by administering a composition comprising an anti-viral compound in a dosage sufficient to inhibit transcription and translation of viral genomes thereby preventing the propagation of viral particles.

DNA Polymerase From Treponema Pallidum

Steiner, Bret Martain
Filed 10 June 97
Serial No. 08/872, 094 (Ref# I–013–96)

This invention provides the nucleic acid and amino acid sequences of the DNA polymerase I region of the Treponema pallidum genome and sequences of nucleic acid molecules that selectively hybridize with nucleic acid molecules encoding the DNA polymerase I enzyme from Treponema pallidum or certain complementary sequences that are described. The nucleic acid molecules are useful for the production of recombinant DNA polymerase I enzyme or as probes to detect the presence of T. pallidum. The nucleic acid and amino acid sequences are also useful as laboratory research tools to study the organism and the disease and to develop therapies and treatments for syphilis.

Nucleic Acids for Detection Aspergillus Species

Morrison, Christine
Filed 2 May 97
Serial No. 60/045, 400 (Ref# I–016–96)

The present invention relates to nucleic acids for detecting Aspergillus species. Unique internal transcribed spacer 2 coding regions permit the development of probes specific for five different species, A. flavus, A. fumigatus, A. niger, A. terreus, and A. nidulans. The invention thereby provides methods for the species-specific detection and diagnosis of Aspergillus infection in a subject.

Nucleic Acids of the M Antigen Gene of Histoplasma Capsulatum, Isolated and Recombinantly-Produced Antigens, Vaccine and Antibodies, Methods and Kits for Detecting Histoplasmosis

Lott, Timothy J.
Filed 30 April 98
Serial No. 60/083,676 CDC Ref# I–002–97

This invention relates to nucleic acids (DNAs) relating to the M antigen gene of Histoplasma capsulatum; to vectors and host expression systems containing these nucleic acids; to nucleic acids (RNAs) which encode the M antigen of H. capsulatum; to isolated and recombinantly-produced antigens encoded by these nucleic acids; to antibodies produced against these antigens; to methods and kits for detecting histoplasmosis using these nucleic acids, antigens and antibodies; and to vaccines for treatment or prevention of histoplasmosis.

Dust Detector Tube

Volkwein, Jon C
Filed 3 July 97
Serial No. 60/052, 619 (Ref# I–004–97)

The present invention relates to an apparatus for real time dust dosimetry using the sampling pump having inlet port coupled to the dust detecting device or tube for detecting dust mass exposure using differential pressure measurements. The tube is elongated with the collection filter positioned therein for trapping dust mass. The dust detecting device coupled to the pump draws the flow of gas there through and traps selected dust mass at the collection filter. Differential pressure between the pump side of the collection filter and the atmosphere is indicative of the cumulative dust mass trapped.

Isocyanate Derivatizing Agent and Methods of Production and Use

Streicher, Robert P.
Filed 13 May 98
Serial No. 60/085,260 (CDC Ref# I–005–97)

This invention relates to a derivatizing agent and method for detecting and quantifying isocyanate contamination in an environmental sample. A novel isocyanate derivatizing agent, useful for the determination of isocyanates in an environmental sample, is provided. A method for producing this agent and a method for measuring the total level of isocyanate in an environmental sample are also provided.

Rapid and Sensitive Method for Detecting Histoplasma Capsulatum

Schafer, Millie P.
Filed 21 April 98
Serial No. 60/082,477 (CDC Ref# I–006–97)

This invention relates to detecting a pathogenic fungus, Histoplasma capsulatum, using oligonucleotide probes specific for H. capsulatum to

amplify H. capsulatum DNA by means of the polymerase chain reaction. Test samples may originate from the environment where H. capsulatum are found, or from clinical samples obtained from the patients.

New Retrovirus Isolated From Humans

Sandstrom, Paul A.
Filed 3 February 97
Serial No. 08/798, 071 (Ref# I–012–97)

This invention comprises a spumavirus isolate of human origin that has been definitively isolated from a human with no apparent disease. This novel spumavirus has been maintained through tissue culture cells where it causes characteristic vacuolation of the cells. The spumavirus also has a reagent for the immunological screening of such viruses. The spumavirus can also serve as a vector in gene therapy because the virus appears to cause no disease in humans and is not transmitted to other humans. Additionally, the spumavirus can be used as a reagent in pathogenicity studies of these and related viruses. Finally, the sequences of the spumavirus can be used as probes to detect virus in biological samples.

Hand Wipe Disclosing Method for the Presence of Lead

Esswein, Eric
Filed 11 June 97
Serial No. (Ref# I–014–97)

A method for the detection of lead in surfaces using a handwipe system and chemical test which includes either rhodizonate or sulfide ions. This invention is especially useful in detecting the presence of lead on skin and assessing the effectiveness of hand washing in removal of lead from the skin of exposed individuals. This invention is also especially useful in field evaluation for the presence of lead, and the effectiveness of its subsequent removal.

Epitope Peptides Immunogenic Against Streptococcus Pneumoniae

Carlone, George
Filed 2 March 98
Serial No. 60/076, 565 (Ref# I–017–97)

This invention describes novel immunogenic peptides obtained from a random library by selection for high affinity binding to monoclonal antibodies specific for Psa A epitopes. In addition, the peptides of the invention have the capability if serving as immunogens in a subject, thereby effectively eliciting the production of antibodies by the subject and additionally conferring protective immunity against infection by S. pneumoniae on the subject. The invention also relates to a selection method employed to obtain such peptides.

Instrumented Cable; Wire for Monitoring Bolts

Martain, Lewis A.
Filed 27 February 98
Serial No. 69/076, 138 (Ref# I–023–97)

This invention provides an apparatus for providing support to a structure, and for measuring stress placed on the apparatus when present in the structure. The stress placed upon the apparatus can be measured at more than one location along the length of the apparatus, and the apparatus is spinnable into a rock mass without damaging said stress measuring devices.

Remote Monitoring Safety System

Marshall, Thomas E.
Filed 9 December 97
Serial No. (CDC Ref# I–024–97)

This invention relates to a roof monitoring safety system in which a single point or multipule points in a single bore hole can be measured to detect movement or sag in the roof strata of an underground mine. Movement of the rock strata overlying the mine is measured directly by use of one or more potentiometers connected via cables to the rock strata at different locations in a bore hole in the roof strata.

Method for Developing Degenerate PCR Primers

Kilpatrick, David R.
Filed 15 April 98
Serial No. 60/081,944 (CDC Ref# I–031–97)

The method of this invention provides degenerate primers for the amplification and subsequent detection of virtually all genes that encode an amino acid sequence. The degenerate primers are effective for detection of any gene which lies within a coding region that results in the production of a protein. Examples of genes that can be detected include those where the sequence of the specific target gene is structural, nonstructural, or enzymatic. The method provides highly specific primers which are effective for substantial amplification of a target sequence even where the target nucleic acid sequence is unknown.

Oligonucleotide Probes for Detecting Enterbacteriaceae and Quinolone-Resistant Enterobacteriaceae

Tenover, Fred C.
Filed 1 April 98
Serial No. (Ref# I–003–98)

This invention provides a simple, rapid, and useful method for differentiating Enterobacteriaceae species and determining their quinolone-resistance status. This invention also provides material and methods to apply the species-specific probes to isolated DNA from host samples for an in vitro diagnosis of Enterobacteiaceae infection.

Method for the Determination of Hexavalent Chromium Using Ultrasonication and Strong Anion Exchange Solid Phase Extraction

Wang, Jin
Filed 27 February 98
Serial No. 60/076,137 (CDC Ref# I–010–98)

This invention relates to a method for the determination of hexavalent chromium. Based on the chemical properties of chromium species in aqueous solutions, a simple, fast, sensitive, and economical field method has been developed and evaluated for the determination of hexavalent chromium in environmental and workplace air samples.

Intrinsically-safe Roof Hazard Alert Module

Mayercheck, William D.
Filed 30 April 98
Serial No. 60/083,677 (CDC Ref# I–012–98)

The invention relates to an intrinsically-safe roof hazard warning device designed to be attached to the roof of a mine to indicate unsupported roof conditions or other unsafe conditions. The device of this invention is especially useful in underground mining operations in order to discourage miners from going into unsupported mine roof areas by rendering the attendant hazard more evident, directing the miner's attention to an appropriate warning message on the module, and thus avoiding the hazard beyond the device. The warning device of this invention is intrinsically-safe, self-contained, simple to use, inexpensive to build and operate, portable, light weight, compact, and low-profile. These features make it useful in short-term or temporary hazardous situations where the installation of complex or bulky warning systems may not be warranted or justified.

Dated: July 10, 1998.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–18936 Filed 7–15–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Cooperative Agreement for Prevention Research Centers, Program Announcement #98028 meeting.

Times and Dates: 8:30–8:50 a.m., August 4, 1998 (Open). 9 a.m.–4:30 p.m., August 4, 1998 (Closed). 9 a.m.–4:40 p.m., August 5, 1998 (Closed).

Place: National Center for HIV, STD, and TB Prevention, CDC, Corporate Square Office Park, Building 12, Room 1307 (Library), Atlanta, Georgia 30329.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement #98028.

Contact Person for More Information: John R. Lehnnherr, Chief, Prevention Support Office, National Center for HIV, STD, and TB Prevention, CDC, Corporate Square Office Park, 11 Corporate Square Boulevard, m/s E07, Atlanta, Georgia 30329, telephone 404/639–8025.

Dated: July 10, 1998.

Nancy C. Hirsch,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention CDC.

[FR Doc. 98–18937 Filed 7–15–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Workshop on Toxoplasmosis; Meeting

The National Center for Infectious Diseases (NCID), Division of Parasitic Diseases (DPD) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: National Workshop on Toxoplasmosis: Preventing Congenital Toxoplasmosis.

Times and Dates: 8:30 a.m.–6 p.m., September 9, 1998.; 8:30 a.m.–3 p.m., September 10, 1998.

Place: CDC, 1600 Clifton Road, Auditorium A, Atlanta, GA 30333.

Status: Open to the public, limited only by the space available.

Purpose: The purpose of this working meeting is to define the key strategies to reduce the burden of congenital toxoplasmosis in the United States.

Matters to be Discussed: Participants will include representatives from public, private, and foreign organizations. They will (1) define approaches to reduce the prevalence of congenital toxoplasmosis, (2) identify data needs to evaluate and/or implement these strategies, and (3) identify critical next steps.

Agenda items are subject to change as priorities dictate.

Written comments are welcome and should be received by the contact person listed below prior to the opening of the meeting.

Contact Person For More Information: Vance Dietz, Epidemiology Branch, DPD, NCID, CDC, M/S F–22, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 770/488–7771, fax 770/488–7761, e-mail vxd0@cdc.gov.

Dated: July 10, 1998.

Nancy C. Hirsch,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC)

[FR Doc. 98–18938 Filed 7–15–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Centers for Disease Control and Prevention Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 63 FR 31785–31786, June 10, 1998) is amended to reflect the establishment of the Office of Global Health within the Office of the Director, Centers for Disease Control and Prevention (CDC), and the abolishment of the International Health Program Office.

Section C–B, Organization and Functions, is hereby amended as follows:

Delete in its entirety the title, mission, and functional statement for the *International Health Program Office (CG).*

After the title and functional statement for the *Division of Media Relations (CAA33), Office of Communication (CAA*, insert the following:

Office of Global Health (CAB). Under the direction of the Associate Director for Global Health, the Office of Global Health (OGH) provides leadership, policy guidance, coordination, technical expertise, and services to promote the agency's global health initiatives. In carrying out this mission, OGH: (1) Advises the CDC Director on global health issues relevant to the agency; (2) assesses evolving global health issues and, in cooperation with Ministries of Health and other appropriate institutions, identifies and develops activities to which the application of CDC's technical expertise would be of maximum public health benefit; (3) collaborates with CDC Centers/Institute/Offices (CIO's), other federal agencies, countries, and organizations, as appropriate, to assist CIO's in the development of appropriate policy for global health initiatives for which they have responsibility; (4) coordinates plans for the allocation of global health resources and assists in the development of external funding sources for programs and projects; (5) coordinates cross-cutting CDC global health enterprises; (6) provides leadership in the development and implementation of the CDC Global Health Strategic Plan and guides CDC's efforts to enhance institutional global health capacity; (7) coordinates international collaboration with external partners, including administration, budgets, and technical assistance to assure that agency obligations are met; (8) provides for the enhancement of internal and external global health partnerships; (9) coordinates the recruitment and orientation of CDC assignees to other agencies or countries; (10) stimulates research and program development through the dissemination of information acquired through on-going global health initiatives; (11) provides global health expertise to CIO international projects, as appropriate and requested by CIO's; (12) coordinates bilateral health agreements between CDC and foreign governments; (13) administers the Exchange Visitors Program; (14) in carrying out the above responsibilities, coordinates activities with CDC/CIO's, the Office of Public Health and Science's Office of International and Refugee Health, the Department of Health and Human

Services' Office of International Affairs, other government and nongovernment organizations, and academic institutions, as appropriate.

Office of the Director (CAB1). (1) Manages, directs, and coordinates the activities of the OGH; (2) provides leadership in developing OGH policy, program planning, implementation, and evaluation; (3) coordinates the management of legislated international ceiling exempt positions; (4) coordinates the CDC cable clearance function; (5) provides for the orientation and scheduling of foreign visitors to CDC; (6) provides CDC support services related to international travel, such as the acquisition of passports, visas, and international clearances; (7) maintains international travel database and develops related reports; (8) serves as the CDC focal point for information regarding CDC's overseas assignees.

Dated: July 7, 1998.

Claire V. Broome, M.D.,

Acting Director.

[FR Doc. 98–18935 Filed 7–15–98; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0494]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the requirements for domestic manufacturers and initial importers of devices to register their establishments and list their devices.

DATES: Submit written comments on the collection of information by September 14, 1998.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301827–1223

SUPPLEMENTARY INFORMATION: Under the PRA (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) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

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

Medical Device Registration and Listing—21 CFR 807

Section 510 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360) requires that manufacturers and initial importers engaged in the manufacture, preparation, propagation, compounding, assembly, or processing of medical devices intended for human use and in commercial distribution register their establishments and list the devices they manufacture with FDA. This is accomplished by completing FDA Form 2891, ''Initial Registration of Device Establishment'' and FDA Form 2892, ''Medical Device Listing.'' In addition, each year active, registered establishments must notify FDA of changes to the current registration and device listing for the establishment. Annual changes to current registration information are pre-printed on FDA Form 2891a and sent to registered establishments. The form must be sent back to FDA's Center for Devices and Radiological Health (CDRH), even if no changes have occurred. Changes to listing information are submitted on Form 2892. Refurbishers/reconditioners are not required to register or list; however, FDA will accept voluntary registration and listings from firms that wish to be registered with FDA.

In addition, under § 807.31 (21 CFR 807.31), each owner or operator is required to maintain a historical file containing the labeling and advertisements in use on the date of initial listing, and in use after October 10, 1978, but before the date of initial listing. The owner or operator must maintain in the historical file any labeling or advertisements in which a material change has been made anytime after initial listing, but may discard labeling and advertisements from the file 3 years after the date of the last shipment of a discontinued device by an owner or operator. Along with the recordkeeping requirements above, the owner or operator must be prepared to submit to FDA upon specific request all labeling and advertising mentioned above (§ 807.31(e)).

The information collected through these provisions is used by FDA to identify firms subject to FDA's regulations and is used to identify geographic distribution in order to effectively allocate FDA's field resources for these inspections and to identify the class of the device which determines the inspection frequency. When complications occur with a particular device or component, manufacturers of similar or related devices can easily be identified.

The likely respondents to this information collection will be domestic establishments engaged in the manufacture, preparation, propagation, compounding, assembly, or processing of medical devices intended for human use and commercial distribution.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	FDA Form	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
807.22(a)	Form 2891–Initial Establishment. Registration	1,462	1	1,462	.25	366
807.22(b)	Form 2892–Device Listing (initial and update)	5,640	1	5,640	.50	2,820
807.22(a)	Form 2891a–Registration Update	22,000	1	22,000	.25	5,500
807.31(e)		200	1	200	.50	100
TOTALS						8,786

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

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
807.31	7,900	10	79,000	0.5	39,500
TOTALS					39,500

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

The annual reporting burden hours to respondents for registering establishments and listing devices is estimated to be 8,786 hours, and recordkeeping burden hours for respondents is estimated to be 39,500 hours. The estimates cited in the tables above are based primarily upon the annual FDA Accomplishment Report, which includes actual FDA registration and listing figures from fiscal year (FY) 1997. These estimates are also based on conversations with industry and trade association representatives, and internal review of the FDA forms and documents referred to in the previous tables.

According to 21 CFR part 807, all owners/operators are required to list, and establishments are required to register. Each owner/operator has an average of two establishments, according to statistics gathered from FDA's Registration and Listing Data Base. The data base has 22,000 establishments listed in it. Based on past experience, the agency anticipates that approximately 1,462 registrations will be processed annually, and that 5,640 initial and update device listings will be submitted. Although FDA only processed 12,237 annual registrations during FY 1997 due to a delay in sending out the annual registration forms, the normal amount of processing of annual registrations in the past has been 22,000. FDA anticipates reviewing 200 historical files annually. Finally, because initial importers (currently estimated at 6,200) do not have to maintain historical files, FDA estimates that the number of recordkeepers required to maintain the initial historical information will be 7,900 (which is the number of establishments, 22,000 minus the number of initial importers, 6,200, divided by 2, the average number of establishments per owner/operator).

Dated: July 8, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–18877 Filed 7–15–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97E–0271]

Determination of Regulatory Review Period for Purposes of Patent Extension; PANDEL Cream

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for PANDEL Cream and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6620.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may

have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product PANDEL Cream (hydrocortisone buteprate). PANDEL Cream is indicated for the relief of the inflammatory and pruritic manifestations of corticosteroid-responsive dermatoses in patients 18 years of age or older. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for PANDEL Cream (U.S. Patent No. 4,290,962) from Taisho Pharmaceutical Co. Ltd., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated July 18, 1997, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of PANDEL Cream represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for PANDEL Cream is 4,165 days. Of this time, 3,078 days occurred during the testing phase of the regulatory review period, 1,087 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective*: October 6, 1985. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on October 6, 1985.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act*: March 10, 1994. The applicant claims March 1, 1994, as the date the new drug application (NDA) for PANDEL Cream (NDA 20–453) was initially submitted. However, FDA records indicate that NDA 20–453 was submitted on March 10, 1994.

3. *The date the application was approved*: February 28, 1997. FDA has verified the applicant's claim that NDA 20–453 was approved on February 28, 1997.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,096 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before September 14, 1998, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before January 12, 1999, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 23, 1998.

Thomas J. McGinnis,

Deputy Associate Commissioner for Health Affairs.

[FR Doc. 98–18878 Filed 7–15–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0508]

Medical Devices: Draft Global Harmonization Task Force Study Group 3 Process Validation Guidance; Draft; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance document entitled ''Draft Global Harmonization Task Force Study Group 3 Process Validation Guidance.'' The draft guidance document has been created by members of the International Global Harmonization Task Force Study Group 3 (GHTF SG3) to propose harmonized international process validation technical requirements and guidance for the manufacture of medical devices. The agency is requesting public comment regarding the draft guidance document as proposed by the GHTF SG3. Because FDA intends to utilize the GHTF document as guidance for the agency and industry, FDA is also publishing this document for comment under its good guidance practices (GGP's).

DATES: Written comments concerning this draft guidance document must be received by August 14, 1998.

ADDRESSES: Submit written comments concerning the draft guidance document entitled ''Draft Global Harmonization Task Force Study Group 3 Process Validation Guidance'' to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document. Submit written requests for single copies on a 3.5'' diskette of the draft guidance document to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Collin L. Figueroa, Center for Devices and Radiological Health (HFZ–341), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–4648.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by governmental regulatory authorities, industry associations, and individual sponsors to promote the international harmonization of regulatory requirements. FDA has participated in numerous efforts to enhance this harmonization and has expressed its commitment to promote the international harmonization of regulatory requirements. As part of this effort, FDA has been actively involved in a Global Harmonization Task Force (GHTF). The GHTF has subsequently formed four study groups, each tasked with aspects designed to facilitate global harmonization.

Study Group 3 of the GHTF drafted the process validation guidance to harmonize quality systems requirements

to ensure manufactured products meet their intended requirements. FDA is committed to publicizing the work product of the GHTF study groups and encourages dissemination of these harmonization documents. Because FDA intends to utilize this GHTF document as guidance for the agency and industry, FDA also is publishing this document for comment under its GGP's. The information and guidance contained in the draft document is intended to help manufacturers understand quality system requirements that involve process validation and how process validation relates to product design and corrective actions.

II. Significance of Guidance

This draft guidance document represents the agency's current thinking on global harmonization and process validation. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both.

The agency has adopted GGP's, which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This guidance document is issued as a Level 1 guidance consistent with GGP's.

III. Electronic Access

In order to receive the ''Draft Global Harmonization Task Force Study Group 3 Process Validation Guidance'' via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number 2268 followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance document may also do so using the World Wide Web (WWW). The Center for Devices and Radiological Health (CDRH) maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a PC with access to the Web. Updated on a regular basis, the CDRH home page includes ''Draft Global Harmonization Task Force Study Group 3 Process Validation Guidance,'' device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. The ''Draft Global Harmonization Task Force Study Group 3 Process Validation Guidance'' will be available at ''http://www.fda.gov/cdrh/comp/ghtfproc.html'' and ''http://www.fda.gov/cdrh/comp/ghtfproc.pdf''.

A text-only version of the CDRH Web site is also available from a computer or VT–100 compatible terminal by dialing 800–222–0185 (terminal settings are 8/1/N). Once the modem answers, press Enter several times and then select menu choice 1: FDA BULLETIN BOARD SERVICE. From there follow instructions for logging in, and at the BBS TOPICS PAGE, arrow down to the FDA home page (do not select the first CDRH entry). Then select MEDICAL DEVICES AND RADIOLOGICAL HEATLH. From there select CENTER FOR DEVICES AND RADIOLOGICAL HEALTH for general information, or arrow down for specific topics.

IV. Comments

Interested persons may, on or before August 14, 1998, submit to the Dockets Management Branch (address above) written comments regarding this draft guidance document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 9, 1998.

D.B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 98–19109 Filed 7–14–98; 12:30 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0469]

Draft Guidance for Industry on Labeling of OTC Topical Drug Products for the Treatment of Vaginal Yeast Infections (Vulvovaginal Candidiasis); 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 ''Labeling Guidance for OTC Topical Drug Products for the Treatment of Vaginal Yeast Infections (Vulvovaginal Candidiasis).'' The guidance is intended to provide a general labeling format for all over-the-counter (OTC) drug products for the treatment of vaginal yeast infections. The draft guidance provides recommendations for both the carton and the educational brochure.

DATES: Written comments on the draft guidance may be submitted by October 14, 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 requests for single copies of the draft guidance entitled ''Labeling Guidance for OTC Topical Drug Products for the Treatment of Vaginal Yeast Infections (Vulvovaginal Candidiasis)'' 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 request. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Requests and comments are to be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Cheryl A. Turner, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance for industry entitled ''Labeling Guidance for OTC Topical Drug Products for the Treatment of Vaginal Yeast Infections (Vulvovaginal Candidiasis).'' Current labeling for such OTC drug products varies widely among manufacturers. However, the content to be communicated in labeling is nearly identical for each product; thus the labeling for these products should convey a clear and consistent message for the consumer. The intent of this document is to provide labeling guidance for all OTC drug products to treat vaginal yeast infections.

Until 1990, topical drug products for the treatment of vulvovaginal candidiasis were available by prescription only. In 1990, FDA convened an advisory committee

meeting to obtain expert on opinion whether the agency should allow topical therapies to be made available for OTC use. The advisory committee recommended that women whose initial episode of vulvovaginal candidiasis was diagnosed and treated by a physician could adequately self-treat their condition without the supervision of a health care provider. The first 7-day intravaginal drug product for the treatment of vulvovaginal candidiasis was approved for OTC use in 1990; the first 3-day product in 1995; and the first single-dose product in 1997.

In the **Federal Register** of February 27, 1997 (62 FR 9024), the agency published a notice entitled ''Over-the-Counter Human Drugs; Proposed Labeling Requirements,'' proposing a standardized format for the labeling of OTC drug products. This proposed standardized format is frequently referred to as the ''Drug Facts Format.'' The agency is developing this guidance document on labeling for OTC drug products for the treatment of vaginal yeast infections in accordance with the ''Drug Facts Format.''

Labeling for OTC drug products for the treatment of vaginal yeast infections consists of three components: (1) The carton, (2) the educational brochure, and (3) the overwrap. With OTC drug products, the agency believes that labeling takes on the critical role of providing information to the consumer. Therefore, consumers must have information that is easily understood to allow for appropriate self-selection and appropriate use of the product. Since there are a variety of OTC products currently available for the treatment of vaginal yeast infections, and since in most cases, the content to be communicated in labeling is nearly identical for each product, the labeling for these products should convey a clear and consistent message to the consumer. The intent of the draft guidance is to provide labeling guidance for all OTC drug products for the treatment of vaginal yeast infections.

The draft guidance represents the agency's current thinking on the labeling of OTC topical drug products for the treatment of vaginal yeast infections. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may, on or before October 14, 1998, submit written comments on the draft guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. The draft guidance document 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: July 7, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–18879 Filed 7–15–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–116, HCFA–416, HCFA–R–148, and HCFA–R–231]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Clinical Laboratory Improvement Amendments (CLIA) Application Form and Supporting Regulations in 42 CFR 493.1—.2001; Form No.: HCFA–116 (OMB# 0938–0581); *Use:* These certification requirements have been established for any entity that performs testing on human beings for diagnostic or treatment purposes. If a laboratory conducts relatively simple tests that are categorized as waived or provider performed microscopy test procedures (PPMP), it must obtain a certificate of waiver or certificate of PPMP. If the laboratory conducts any tests outside of these two categories, it must apply for a certificate of compliance or certificate of accreditation and initially obtain a registration certificate. These certificates ensure that laboratories are in compliance with CLIA.; *Frequency:* Biennially; *Affected Public:* Business or other for profit, Not for profit institutions, Federal Government, and State, local or tribal government; *Number of Respondents:* 16,000; *Total Annual Responses:* 16,000; *Total Annual Hours:* 20,000.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Annual Early and Periodic Screening, Diagnostic, and Treatment Services (EPSDT) Participation Report and Supporting Regulations in 42 CFR 441.60; *Form No.:* HCFA–416 (OMB# 0938–0354); *Use:* States are required to submit an annual report on the provision of EPSDT services to HCFA pursuant to section 1902(a)(43) of the Social Security Act. These reports provide HCFA with data necessary to assess the effectiveness of State EPSDT programs. It is also helpful in developing trend patterns, national projections, responding to inquiries, and determining a State's results in achieving its participation goal.; *Frequency:* Annually; *Affected Public:* State, Local or Tribal Government; *Number of Respondents:* 56; *Total Annual Responses:* 56; *Total Annual Hours:* 1,568.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Limitation on Provider-Related Donations and Health Care-Related Taxes; Limitations on Payments to Disproportionate Share Hospitals; Medicaid and Supporting Regulations in 42 CFR 433.68, 433.74, 447.74 and 447.272; *Form No.:* HCFA–R–148 (OMB# 0938–0618); *Use:* These information collection requirements specify limitations on the amount of Federal financial participation available for medical assistance expenditures in a fiscal year. States receive donated funds from providers and revenues are generated by health care related taxes. These donations and revenues are used to fund medical assistance programs.; *Frequency:* Quarterly; *Affected Public:* State, Local, or Tribal Government; *Number of Respondents:* 51; *Total Annual Responses:* 51; *Total Annual Hours:* #3,892.

4. *Type of Information Request:* Revision of a currently approved collection; *Title of Information*

Collection: Medicare+Choice (M+C) Providers Sponsored Organization (PSO) Waiver Request Form and Supporting Regulations in 42 CFR 422.370–422.378; *Form Number:* HCFA–R–231; *Use:* The PSO waiver request form is for use by PSO's that do not have a State risk-bearing entity licence and that wish to enter into a M+C contract with HCFA to provide prepaid health care services to eligible Medicare beneficiaries. HCFA will use the information requested on this form to determine whether the applicant is eligible for a waiver of the state licensure requirement for M+C organizations as allowed under section 1855(a)(2) of the Social Security Act.; *Frequency:* One-time.; *Affected Public:* Business or other for-profit, Not-for-profit institutions, and Federal Government.; *Annual Number of Respondents:* 30.; *Total Annual Responses:* 30.; *Total Annual Hours Requested:* 300.

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: July 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. 98–19003 Filed 7–15–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Privacy Act of 1974; Report of Altered Systems

AGENCY: Department of Health and Human Services (HHS), Health Care Financing Administration (HCFA).

ACTION: Notice of the global addition of three new routine uses to designated HCFA Systems of Records.

SUMMARY: HCFA is adding three additional routine uses to the Systems of Records specified in Appendix A. These routine uses will permit HCFA to disclose individual-specific information for the purpose of combating fraud or abuse in the health benefit programs administered by HCFA and for other compatible purposes. These new routine uses will permit HCFA to make disclosures as follows: (1) To a HCFA contractor, including but not necessarily limited to fiscal intermediaries and carriers under title XVIII of the Social Security Act, to administer some aspect of a HCFA-administered health benefits program, or to a grantee of a HCFA-administered grant program, which program is or could be affected by fraud or abuse, for the purpose of preventing, deterring, discovering, detecting, investigating, examining, prosecuting, suing with respect to, defending against, correcting, remedying, or otherwise combating such fraud or abuse in such program; (2) To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States, including any state or local government agency, for the purpose of preventing, deterring, discovering, detecting, investigating, examining, prosecuting, suing with respect to, defending against, correcting, remedying, or otherwise combating fraud or abuse in a health benefits program funded in whole or in part by Federal funds; and, (3) To any entity that makes payment for or oversees the administration of health care services, for the purpose of preventing, deterring, discovering, detecting, investigating, examining, prosecuting, suing with respect to, defending against, correcting, remedying, or otherwise combating fraud or abuse against such entity or the program or services administered by such entity, subject to certain conditions.

EFFECTIVE DATES: HCFA filed an altered system report with the Chairman of the Committee on Government Reform and Oversight of the House of Representatives, the Chairman of the Committee on Governmental Affairs of the Senate, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), on June 29, 1998. The proposed new routine uses will become effective 40 days from the date the altered system report is submitted to Congress and to OMB or 30 days from the publication of this notice, whichever is later.

ADDRESSES: The public should address comments to Phillip L. Brown, Director, Division of Freedom of Information and Privacy Office, C2–26–21, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location by appointment, Monday through Friday 9 a.m.–3 p.m., eastern time zone.

FOR FURTHER INFORMATION CONTACT: Mr. Nelson Berry, Director, Division of Data Liaison and Distribution, Office of Information Services, HCFA, N3–13–15, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. His telephone number is (410) 786–0182.

SUPPLEMENTARY INFORMATION: We are publishing this notice to inform the public of our intent to add three routine uses under which HCFA may release information without the consent of the individual to whom such information pertains in order to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in the programs HCFA administers. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. Also, HCFA will require each prospective recipient of such information to agree in writing to certain conditions to ensure the continuing confidentiality of the information. More specifically, as a condition of each disclosure under these routine uses, HCFA will:

(a) Determine that no other Federal statute specifically prohibits disclosure of the information;

(b) Determine that the use or disclosure does not violate legal limitations under which the information was provided, collected, or obtained;

(c) Determine that the purpose for which the disclosure is to be made;

(1) Cannot reasonably be accomplished unless the information is provided in individually identifiable form;

(2) Is of sufficient importance to warrant the effect on or the risk to the privacy of the individual(s) that additional exposure of the record(s) might bring;

(3) There is a reasonable probability that the purpose of the disclosure will be accomplished;

(d) Require the recipient of the information to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized access, use or disclosure of the record or any part thereof. The physical safeguards shall provide a level of security that is at least the equivalent of the level of security contemplated in OMB Circular No. A–130 (revised), Appendix III—Security of Federal Automated Information Systems which sets forth guidelines for security plans for automated information systems in Federal agencies;

(2) Remove or destroy the information that allows the subject individual(s) to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the request;

(3) Refrain from using or disclosing the information for any purpose other than the stated purpose under which the information was disclosed;

(4) Make no further use or disclosure of the information except:

(i) To prevent or address an emergency directly affecting the health or safety of an individual;

(ii) For use on another project under the same conditions, provided HCFA has authorized the additional use(s) in writing; and,

(iii) When required by law;

(e) Secure a written statement or agreement from the prospective recipient of the information whereby the prospective recipient attests to an understanding of and willingness to abide by the foregoing provisions and any additional provisions that HCFA deems appropriate in the particular circumstances; and,

(f) Determine whether the disclosure constitutes a computer ''matching program'' as defined in 5 U.S.C. 552a(a)(8). If the disclosure is determined to be a computer ''matching program,'' the procedures for matching agreements as contained in 5 U.S.C. 552a(o) must be followed.

The new routine uses established by this notice are to be considered as the next three numbers following the existing enumerated routine uses in each of the individual systems of records being affected as listed in Appendix A. These new routine uses read as follows:

(1) To a HCFA contractor, including but not necessarily limited to fiscal intermediaries and carriers under title XVIII of the Social Security Act, to administer some aspect of a HCFA-administered health benefits program, or to a grantee of a HCFA-administered grant program, which program is or could be affected by fraud or abuse, for the purpose of preventing, deterring, discovering, detecting, investigating, examining, prosecuting, suing with respect to, defending against, correcting, remedying, or otherwise combating such fraud or abuse in such programs.

(2) To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States, including any state or local government agency, for the purpose of preventing, deterring, discovering, detecting, investigating, examining, prosecuting, suing with respect to, defending against, correcting, remedying, or otherwise combating fraud or abuse in a health benefits program funded in whole or in part by Federal funds.

(3) To any entity that makes payment for, or oversees the administration of, health care services, for the purpose of preventing, deterring, discovering, detecting, investigating, examining, prosecuting, suing with respect to, defending against, correcting, remedying, or otherwise combating fraud or abuse against such entity or the program or services administered by such entity, provided:

(a) Such entity enters into an agreement with HCFA to share knowledge and information regarding actual or potential fraudulent or abusive practices or activities regarding the delivery or receipt of health care services, or regarding securing payment or reimbursement for health care services, or any practice or activity that, if directed toward a HCFA-administered program, might reasonably be construed as actually or potentially fraudulent or abusive;

(b) Such entity does, on a regular basis, or at such times as HCFA may request, fully and freely share such knowledge and information with HCFA, or as directed by HCFA, with HCFA's contractors; and,

(c) HCFA determines that it may reasonably conclude that the knowledge or information it has received or is likely to receive from such entity could lead to preventing, deterring, discovering, detecting, investigating, examining, prosecuting, suing with respect to, defending against, correcting, remedying, or otherwise combating fraud or abuse in the Medicare, Medicaid, or other health benefits program administered by HCFA or funded in whole or in part by Federal funds.

These proposed new routine uses are consistent with the relevant provisions of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

Because these proposed routine uses will significantly alter the systems of records listed in Appendix A, we are preparing a report of altered system of records under 5 U.S.C. 552a(r).

Dated: June 29, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Appendix A

09–70–0005 National Claims History (NCH), HHS/HCFA/BDMS
09–70–0040 Health Care Financing Administration Organ Transplant Data File, HS/HCFA/BDMS
09–70–0501 Carrier Medicare Claims Records, HHS/HCFA/BPO
09–70–0503 Intermediary Medicare Claims Records, HHS/HCFA/BPO
09–70–0505 Supplemental Medical Insurance (SMI) Accounting Collection and Enrollment System (SPACE), HHS/HCFA/BPO
09–70–0516 Medicare Physician Supplier Master File, HHS/HCFA/BPO
09–70–0518 Medicare Clinic Physician Supplier Master File, HHS/HCFA/BPO
09–70–0520 End Stage Renal Disease (ESRD) Program Management and Medical Information System (PMMIS), HHS/HCFA/BDMS
09–70–0524 Intern and Resident Information System, HHS/HCFA/BPO
09–70–0525 Medicare Physician Identification and Eligibility System (MPIES), HHS/HCFA/BPO
09–70–0526 Common Working File (CWF), HHS/HCFA/BPO
09–70–0527 HCFA Utilization Review Investigatory Files, HHS/HCFA/BPO
09–70–0529 Medicare Supplier Identification File, HHS/HCFA/BPO
09–70–1511 Physical Therapists in Independent Practice (Individuals), HHS/HCFA/HSQB
09–70–2003 HCFA Program Integrity/Program Validation Case Files HHS/HCFA/BPO
09–70–2006 Income and Eligibility Verification for Medicaid Eligibility Quality Control (MEQC) Review, HHS/HCFA
09–70–4001 Group Health Plan (GHP) System, HHS/HCFA/OMC
09–70–4003 Medicare HMO/CMP Beneficiary Reconsideration System (MBRS), HHS/HCFA/OMC
09–70–6001 Medicaid Statistical Information System (MSIS), HHS/HCFA/BDMS

[FR Doc. 98–17944 Filed 7–15–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Commission on Childhood Vaccines Request for Nominations for Voting Members

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is requesting nominations to fill three vacancies on the Advisory Commission on Childhood Vaccines (ACCV). The ACCV was established by Title XXI of the Public Health Service Act (the Act), as enacted by Public Law (Pub. L.) 99–660 and as subsequently amended, and advises the Secretary of Health and Human Services (the Secretary) on issues related to implementation of the National Vaccine Injury Compensation Program (VICP).

FOR FURTHER INFORMATION CONTACT: Ms. Melissa Palmer, Principal Staff Liaison, Policy and Commission Branch, Division of Vaccine Injury Compensation, at (301) 443–3196.

DATES: Nominations are to be submitted by August 17, 1998.

ADDRESSES: All nominations are to be submitted to the Director, Division of Vaccine Injury Compensation, Bureau of Health Professions, HRSA, Parklawn Building, Room 8A–35, 5600 Fishers Lane, Rockville, Maryland 20857.

SUPPLEMENTARY INFORMATION: Under the authorities that established the ACCV, viz., the Federal Advisory Committee Act of October 6, 1972 (P.L. 92–463) and section 2119 of the Act, 42 U.S.C. 300aa–19, as added by P.L. 99–660 and amended, HRSA is requesting nominations for three voting members of the ACCV.

The ACCV advises the Secretary on the implementation of the VICP; on its own initiative or as the result of the filing of a petition, recommends changes in the Vaccine Injury Table; advises the Secretary in implementing the Secretary's responsibilities under section 2127 regarding the need for childhood vaccination products that result in fewer or no significant adverse reactions; surveys Federal, State, and local programs and activities relating to the gathering of information on injuries associated with the administration of childhood vaccines, including the adverse reaction reporting requirements of section 2125(b); advises the Secretary on means to obtain, compile, publish, and use credible data related to the frequency and severity of adverse reactions associated with childhood vaccines; and recommends to the Director, National Vaccine Program Office, research related to vaccine injuries which should be conducted to carry out the VICP.

The ACCV consists of nine voting members appointed by the Secretary as follows: three health professionals, of whom at least two are pediatricians, who are not employees of the United States, who have expertise in the health care of children, the epidemiology, etiology and prevention of childhood diseases, and the adverse reactions associated with vaccines; three members from the general public, of whom at least two are legal representatives (parents or guardians) of children who have suffered a vaccine-related injury or death; and three attorneys, of whom at least one shall be an attorney whose specialty includes representation of persons who have suffered a vaccine-related injury or death, and one shall be an attorney whose specialty includes representation of vaccine manufacturers. In addition, the Director of the National Institutes of Health, the Assistant Secretary for Health and Surgeon General, the Director of the Centers for Disease Control and Prevention, and the Commissioner of the Food and Drug Administration (or the designees of such officials) serve as nonvoting ex officio members.

Specifically, HRSA is requesting nominations for three voting members of the ACCV representing: (1) a health professional with special experience in childhood diseases; (2) an attorney whose specialty includes representation of persons who have suffered a vaccine-related injury or death; and (3) a member from the general public who is a legal representative (parent or guardian) of a child (or children) who has suffered a vaccine-related injury or death. Nominees will be invited to serve 3-year terms beginning January 1, 1999, and ending December 31, 2001.

Interested persons may nominate one or more qualified persons for membership on the ACCV. Nominations shall state that the nominee is willing to serve as a member of the ACCV and appears to have no conflict of interest that would preclude the ACCV membership. Potential candidates will be asked to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts to permit evaluation of possible sources of conflicts of interest. A curriculum vitae or résumé should be submitted with the nomination.

The Department of Health and Human Services has special interest in assuring that women, minority groups, and the physically handicapped are adequately represented on advisory committees and therefore extends particular encouragement to nominations for appropriately qualified female, minority, or physically handicapped candidates.

Dated: July 10, 1998.

Claude Earl Fox,

Administrator.

[FR Doc. 98–18954 Filed 7–15–98; 8:45 am]

BILLING CODE 4160–15–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Project Grants for Health Care and Other Facilities

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of limited competition for grant funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces a limited competition to provide $510,203 in construction funding to Iowa hospitals which were recipients of Rural Health Transition Grants from the Health Care Financing Administration. Funds were appropriated for this purpose by Public Law 105–78 under the Public Health Service Act.

Funds are available to support one or two construction/renovation projects. In accordance with the directive set forth in the House and Senate Conference Report on Public Law 105–78, competition is limited to the hospitals listed below (H.R. Report No. 105–390, dated November 7, 1997). Award consideration will be limited to the following Iowa facilities:

Adair County Memorial Hospital, Greenfield;
Audubon County Memorial Hospital, Audubon;
Cass County Memorial Hospital, Atlantic;
Davis County Hospital, Bloomfield;
Greene County Medical Center, Jefferson;
Guthrie County Hospital, Guthrie Center;
Hamilton County Public Hospital, Webster City;
Horn Memorial Hospital, Ida Grove;
Mahaska County Hospital, Oskaloosa;
Manning General Hospital, Manning;
Monroe County Hospital, Albia;
Montgomery County Memorial Hospital, Red Oak;
Palo Alto County Hospital, Emmetsburg;
Ringgold County Hospital, Mount Ayr;
St. Anthony Regional Hospital, Carroll;
St Joseph's Mercy Hospital, Centerville;
Story County Hospital, Nevada;
Van Buren County Hospital, Xerosauqua;
Washington County Hospital, Washington;
Wayne County Hospital, Corydon;
Winneshiek County Memorial Hospital, Decorah.

Other Award Information: HHS strongly encourages all grant and contract recipients to provide a smoke free workplace and to promote the

nonuse of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children.

FOR FURTHER INFORMATION CONTACT: Additional information relating to technical and program issues may be obtained from Mr. Paul Murphy, Chief, Facilities Monitoring Branch, Division of Facilities Compliance and Recovery, Office of Special Programs, HRSA, Twinbrook Metro Plaza Building, 12300 Twinbrook Parkway, Suite 520, Rockville, Maryland 20857, (301) 443–4303. Information regarding business, administrative, or fiscal issues related to the awarding of grants under this Notice may be requested from Mr. Tom Castonguay, Grants Management Specialist, HIV/AIDS Bureau, HRSA, Parklawn Building, Room 7–27, 5600 Fishers Lane, Rockville, Maryland 20857, 301 443–2385. Applicants for grants will use Form PHS 5161–1, approved under OMB Control Number 0937–0189.

The OMB Catalog of Federal Domestic Assistance number for Health Care Facilities is 93.887.

Dated: July 10, 1998.

Claude Earl Fox,

Administrator.

[FR Doc. 98–18953 Filed 7–15–98; 8:45 am]

BILLING CODE 4160–15–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

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 Cancer Institute Special Emphasis Panel, Phase I Trial: Autologous, Tumor-pulsed Dendritic Cells.

Date: August 3–4, 1998.

Time: 8:00 AM to 6:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Martin H. Goldrosen, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard, Room 635C, Rockville, MD 20852–7408, (301) 496–7930.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 10, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–18926 Filed 7–15–98; 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, RFA 98–003—Peroxisome Proliferators and Mechanisms of Carcinogenesis.

Date: July 22, 1998.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIEHS-East Campus, 79 T.W. Alexander Drive, Bldg. 4401, Room 3162, Research Triangle Park, NC 27709.

Contact Person: Carol K. Shreffler, Ph.D., 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.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Probing for Substrate Binding Residues of Mammalian FMOs.

Date: July 28, 1998.

Time: 1:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIEHS, 79 T.W. Alexander Drive, Building 4401, Conference Room 3446, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: David Brown, MPH, Nat'l Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–4964.

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 Environmental Health Sciences Special Emphasis Panel, Lead and CaMPKII Modulation of Hair Cells.

Date: July 29, 1998.

Time: 1:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIEHS, 79 T.W. Alexander Drive, Building 4401, Conference Room 3446, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: David Brown, MPH, Nat'l Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–4964.

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. 93.115, 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; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: July 10, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–18924 Filed 7–15–98; 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 if 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 13, 1998.

Time: 4:00 PM to 7:00 PM.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency-Baltimore, 300 Light Street, Baltimore, MD 21202.

Contact Person: Gerald E. Calderone, Ph.D., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–18, Rockville, MD 20857, 301–443–1340.

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: July 15–16, 1998.

Time: 8:15 AM to 6:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Lawrence E. Chaitkin, Ph.D., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–26, Rockville, MD 20857, 301–443–6470.

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: July 23, 1998.

Time: 9:00 AM to 2:00 PM.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Chevy Chase Pavilion, 4300 Military Road, NW, Washington, DC 20015.

Contact Person: Gerald E. Calderone, Ph.D., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–18, Rockville, MD 20857, 301–443–1340.

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: July 28, 1998.

Time: 9:00 AM to 2:00 PM.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Gerald E. Calderone, Ph.D., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–18, Rockville, MD 20857, 301–443–1340.

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: July 10, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–18925 Filed 7–15–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4281–N–06]

Withdrawal of Request for Comment on Notice of Proposed Information Collection

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice withdraws the notice requesting public comments on information collection requirements for the Urban Empowerment Zone Initiative. The notice requesting public comments was published in error.

FOR FURTHER INFORMATION CONTACT: James Selvaggi, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, telephone (202) 708–3773. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On July 2, 1998 (63 FR 36253), HUD published a notice of proposed information collection requesting public comments for a period of 60 days on the proposed information collection requirements for the Urban Empowerment Zone (EZ) Initiative (Round Two). This notice was published in error. The 60-day public comment request on the information collection requirements for the EZ Round Two Initiative was contained in the interim rule published on April 16, 1998 (63 FR 19109). Accordingly, this notice is withdrawn. The next notice to be published should be a notice that advises that OMB approval number 2506–0148 (the current OMB approval number for the EZ Round Two Initiative), which expires on August 31, 1998, has been approved for a period of three years.

Dated: July 10, 1998.

Camille Acevedo,

Assistant General Counsel for Regulations.

[FR Doc. 98–18997 Filed 7–15–98; 8:45 am]

BILLING CODE 4210–29–P

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.*):

PRT–844465

Applicant: John Monson, Bedford, NH.

The applicant requests a permit to import a sport-hunted trophy of a cheetah (*Acinonyx jubatus*) from Namibia for the purpose of enhancement to the survival of the species.

PRT–844464

Applicant: Robert Lange, Bloomington, MN.

The applicant requests a permit to import a sport-hunted trophy of a cheetah (*Acinonyx jubatus*) from Namibia for the purpose of enhancement to the survival of the species.

PRT–844457

Applicant: Charles Merryman, Riverview, FL.

The applicant requests a permit to import a sport-hunted trophy of a cheetah (*Acinonyx jubatus*) from Namibia for the purpose of enhancement to the survival of the species.

PRT–843424

Applicant: White Oak Conservation Center, Yulee, FL.

The applicant requests a permit to export one male captive-born Black rhinoceros (*Diceros bicornis*) to the Marakele National Park, Republic of South Africa for the purpose of re-introduction into the wild.

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).

PRT–844287

Applicant: Ishikawa Zoo Foundation, Ishikawa, Japan.

Permit Type: Take for Public Display.

Name and Number of Animals: Northern sea otter (*Enhydra lutris lutris*), up to 24.

Summary of Activity to be Authorized: The applicant requests a permit to collect and export up to 3 northern sea otters for the purpose of public display at the Ishikawa Zoo. Up to 24 otters may be captured in the course of collection activities in order to obtain 1 male and 2 female otters for export and public display. It is intended that collections will be made at the same time to provide otters to the Kagoshima City Aquarium (PRT–844288) and the Suma Aqualife Park (PRT–844289). Therefore, a total of 24 takes is requested to collect up to 6 otters that will be distributed among the three facilities. Any otter not selected for export will be immediately released to the wild.

Source of Marine Mammals: In the vicinity of Kodiak Island, AK, Afognak Strait, Gnak Bay and Kupreanof Strait.

Period of Activity: Up to 5 years from issuance date of permit, if issued.

PRT–844288

Applicant: Kagoshima City Aquarium, Kakoshima-Pre, Japan.

Permit Type: Take for Public Display.

Name and Number of Animals: northern sea otter (*Enhydra lutris lutris*), up to 24.

Summary of Activity to be Authorized: The applicant requests a permit to collect and export up to 2 northern sea otters for the purpose of public display at the Kagoshima City Aquarium. Up to 24 otters may be captured in the course of collection activities in order to obtain 2 female otters for export and public display. It is intended that collections will be made at the same time to provide otters to the Ishikawa Zoo Foundation (PRT–844287) and the Suma Aqualife Park (PRT–844289). Therefore, a total of 24 takes is requested to collect up to 6 otters that will be distributed among the three facilities. Any otter not selected for export will be immediately released to the wild.

Source of Marine Mammals: In the vicinity of Kodiak Island, AK, Afognak Strait, Gnak Bay and Kupreanof Strait.

Period of Activity: Up to 5 years from issuance date of permit, if issued.

Applicant: Suma Aqualife Park, Kobe, Japan, PRT–844289.

Permit Type: Take for Public Display.

Name and Number of Animals: northern sea otter (Enhydra lutris lutris), up to 24.

Summary of Activity to be Authorized: The applicant requests a permit to collect and export up to 1 northern sea otter for the purpose of public display at the Suma Aqualife Park. Up to 24 otters may be captured in the course of collection activities in order to obtain 1 female otter for export and public display. It is intended that collections will be made at the same time to provide otters to the Ishikawa Zoo Foundation (PRT–844287) and the Kagoshima City Aquarium (PRT-844288).Therefore, a total of 24 takes is requested to collect up to 6 otters that will be distributed among the three facilities. Any otter not selected for export will be immediately released to the wild.

Source of Marine Mammals: In the vicinity of Kodiak Island, AK, Afognak Strait, Gnak Bay and Kupreanof Strait.

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.

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 with the application are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the above address within 30 days of the date of publication of this notice.

Dated: July 10, 1998.

MaryEllen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 98–18888 Filed 7–15–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Minor Adjustment of Kenai National Wildlife Refuge Boundary

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of boundary adjustment.

SUMMARY: The Secretary of the Interior, acting through the Regional Director, Region 7, of the Fish and Wildlife Service, has made a minor modification to the boundary of the Kenai National Wildlife Refuge in the State of Alaska. This boundary adjustment was made to incorporate within the Refuge a parcel of land, purchased by the United States, which is adjacent to the former Refuge boundary. This action added 71.84 acres to the Refuge.

DATES: Title to the land in question vested in the United States of America on December 24, 1996. Notification to Congress of the proposed boundary change was provided August 5, 1997.

ADDRESSES: Division of Realty, Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503–6199.

FOR FURTHER INFORMATION CONTACT: Sharon N. Janis, 907–786–3490.

SUPPLEMENTARY INFORMATION: In 1996, a 1377-acre parcel of land was purchased from the Salamatof Native Corporation by the United States, for administration by the Fish and Wildlife Service. The majority of this parcel lies within the boundaries of the Kenai National Wildlife Refuge as established by the Alaska National Interest Lands Conservation Act. A portion of the purchased land, 71.84 acres in size, falls between the ANILCA boundary and the Kenai River. This portion is more particularly described as Lot 7 of Section 31, and Lots 8 and 9 of Section 32, Township 5 North, Range 9 West, Seward Meridian, Alaska.

Section 103(b) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3103(b)) establishes authority for the Secretary of the Interior to make minor boundary adjustments to the Wildlife Refuges created by the Act. Under this authority, and following due notice to Congress, the Secretary, acting through the Regional Director, Region 7, of the Fish and Wildlife Service, has used this authority to adjust the boundaries of the Kenai Refuge to include the 71.84-acre parcel described above. This adjustment modifies the boundary previously described in the **Federal Register** (48 FR 7955, Feb. 24, 1983).

Robyn Thorson,

Acting Regional Director.

[FR Doc. 98–19005 Filed 7–15–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–060–07–1990–00]

Call for Nominations for the Bureau of Land Management's California Desert District Advisory Council

SUMMARY: The Bureau of Land Management's California Desert District is soliciting nominations from the public for five members of its District Advisory Council to serve the 1999–2001 three-year term. Council members provide advice and recommendations to BLM on the management of public lands in southern California. Public notice begins with the publication date of this notice. Nominations will be accepted through August 31, 1998. The three-year term would begin January 1, 1999.

The five positions to be filled include:

—One elected official representative (representing county government);
—One nonrenewable resources representative;
—One public-at-large representative;
—Two recreation representatives.

Council members serve three-year terms and may be nominated for reappointment for an additional three-year term. Four council members are eligible for reappointment. The elected official representative, who represents county government interests on the council, will retire December 31, 1998.

The California Desert District Advisory Council is comprised of 15 private individuals who represent different interests and advise BLM officials on policies and programs concerning the management of 10 million acres of public land in southern California. The Council meets in formal session three to four times each year in various locations throughout the California Desert District. Council members serve without compensation except for reimbursement of travel expenditures incurred in the course of their duties.

Section 309 of the Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and issues related to management of BLM administered lands. The Secretary also selects council nominees consistent with the requirements of the Federal Advisory Committee Act (FACA), which requires nominees appointed to the council be balanced in terms of points of view and representative of the various interests concerned with the management of the public lands.

The Council also is balanced geographically, and BLM will try to find qualified representatives from areas throughout the California Desert District. The District covers portions of eight counties, and includes 10 million acres of public land in the California Desert Conservation Area and 300,000 acres of scattered parcels in San Diego, western Riverside, western San Bernardino, Orange, and Los Angeles Counties (known as the South Coast).

Any group or individual may nominate a qualified person, based upon their education, training, and knowledge of BLM, the California Desert, and the issues involving BLM-administered public lands throughout southern California. Qualified individuals also may nominate themselves.

Nominations must include the name of the nominee; work and home addresses and telephone numbers; a biographical sketch that includes the nominee's work and public service record; any applicable outside interests or other information that demonstrates the nominees qualifications for the position; and the specific category of interests in which the nominee is best qualified to offer advice and council. Nominees may contact the BLM California Desert District public affairs staff at (909) 697–5217/5220 or write to the address below and request a copy of the nomination form.

All nominations must be accompanied by letters of reference from represented interests, organizations, or elected officials supporting the nomination. Individuals nominating themselves must provide at lease one letter of recommendation. Advisory Council members are appointed by the Secretary of the Interior, generally in late January or early February.

Nominations should be sent to the District Manager, Bureau of Land Management, California Desert District, 6221 Box Springs Boulevard, Riverside, California 92507.

FOR FURTHER INFORMATION CONTACT: BLM California Desert District External Affairs: Carole Levitzky, (909) 697–5217 or Doran Sanchez, (909) 697–5220.

Dated: July 8, 1998.

Tim Salt,

Acting District Manager.

[FR Doc. 98–18946 Filed 7–15–98; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–050–1020–001]

Mojave-Southern Great Basin Resource Advisory Council—Notice of Meeting Locations and Times

AGENCY: Bureau of Land Management, Interior.

ACTION: Resource Advisory Council Meeting Locations and Times.

DATES: Date is August 10, 1998 from 8 a.m. to 4 p.m. and will reconvene on August 11, 1998 from 5 a.m. to 12:35 p.m. The public comment period will begin at 2:30 p.m., August 10, 1998.

ADDRESSES: The Council will meet in the Oasis Hotel in Mesquite, Nevada, (702) 346–5232.

FOR FURTHER INFORMATION CONTACT: Philip L. Guerrero, Las Vegas Field Office, Public Affairs Officer, telephone: (702) 647–5046.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM), council meeting of the Mojave-Southern Great Basin Resource Advisory Council (RAC) will be held as indicated above. The agenda includes a public comment period, and discussion of public land issues.

The Resource Advisory Council develops recommendations for BLM regarding the preparation, amendment, and implementation of land use plans for the public lands and resources within the jurisdiction of the council. For the Mojave-Great Basin RAC this jurisdiction is Clark, Esmeralda, Lincoln and Nye counties in Nevada. Except for the purposes of long-range planning and the establishment of resource management priorities, the RAC shall not provide advice on the allocation and

expenditure of Federal funds, or on personnel issues.

The RAC may develop recommendation for implementation of ecosystem management concepts, principles and programs, and assist the BLM to establish landscape goals and objectives.

All meetings are open to the public. The public may present written comments to the council. Public comments should be limited to issues for which the RAC may make recommendations within its area of jurisdiction. Depending on the number of persons wishing to comment, and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need further information about the meetings, or need special assistance such as sign language interpretation or other reasonable accommodations, should contact Phillip L. Guerrero at the Las Vegas District Office, 4765 Vegas Dr., Las Vegas, NV 89108, telephone, (702) 647–5000.

Dated: July 6, 1998.

Phillip L. Guerrero,

Public Affairs Officer.

[FR Doc. 98–18903 Filed 7–15–98; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–4210–05, N–59066, and N–61108]

Termination of Land Exchange Segregation; Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action terminates the land exchange segregation, dated July 23, 1997, for N–61855. The lands are being made available for a Recreation & Public Purpose (R&PP) Leases to Clark County for a County Operations Facility (N–59066) and a park site (N–61108).

EFFECTIVE DATE: July 16, 1998.

FOR FURTHER INFORMATION CONTACT: Cheryl Frassa-McDonough, (702) 647–5088.

SUPPLEMENTARY INFORMATION: Upon notation to the public land office records, on July 23, 1997, the lands were segregated for exchange purposes. The lands became segregated from all other forms of appropriation under the public land laws including location and entry under the mining laws. The lands are needed for R&PP Leases. The segregation is hereby terminated on the following described lands:

N–59066

Mount Diablo Meridian, Nevada

T. 21 S., R. 61 E.,
Sec. 31, Lots, 21, 26, 27, 28, 30, 35, 36
W½W½NE¼NW¼,
SE¼SW¼NE¼NW¼,
SW¼SE¼NE¼NW¼,
E½,SE¼NE¼NW¼.

Approximately 38.34 acres.

N–61108

Mount Diablo Meridian,

T. 22 S., R. 61 E.,
Sec. 15, NE¼SE¼NE¼, SE¼SE¼NE¼.

Approximately 20.0 acres.

The areas described aggregate 58.34 acres.

The land is hereby made available for Recreation & Public Purposes. The land will remain closed to surface entry and mining due to an overlaping segregation.

Dated: July 9, 1998.

Rex Wells,

Assistant Field Office Manager, Las Vegas Field Office.

[FR Doc. 98–18942 Filed 7–15–98; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–4210–05, and N–57883]

Termination of Land Exchange Segregation; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action terminates the land exchange segregation, dated July 23, 1997, for N–61855. The lands are being made available for a Recreation & Public Purpose (R&PP) Lease to Clark County for a park site.

EFFECTIVE DATE: July 16, 1998.

FOR FURTHER INFORMATION CONTACT: Cheryl Frassa-McDonough.

SUPPLEMENTARY INFORMATION: Upon notation to the public land office records, on July 23,1997, the lands were segregated for exchange purposes. The lands became segregated from all other forms of appropriation under the public land laws including location and entry under the mining laws. The lands are needed for a R&PP Lease. The segregation is hereby terminated on the following described lands:

Mount Diablo Meridian, Nevada

T. 20 S., R. 60 E.,
Sec.6, E½NW¼SE¼NW¼,
SW¼SE¼NW¼, NW¼NE¼SW¼,
W½SW¼NE¼SW¼.

Approximately 30.0 acres Clark County.

The land is hereby made available for R&PP. The land will remain closed to surface entry and mining due to an overlapping segregation.

Dated: July 8, 1998.

Rex Wells,

Assistant Field Office Manager, Las Vegas Field Office.

[FR Doc. 98–18943 Filed 7–15–98; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–97–1430–01; N–57698]

Termination of Recreation and Public Purposes Classification; Nevada

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice.

SUMMARY: This notice terminates Recreation and Public Purposes Classification N–57698, in part, as it relates to the lands described below and provides for opening the land to disposal by exchange to Carl Volkmar, pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 CFR 2200).

EFFECTIVE DATE: July 16, 1998.

FOR FURTHER INFORMATION CONTACT: Cheryl Ruffridge, Las Vegas District Office, Bureau of Land Management, 4765 Vegas Drive, Las Vegas, NV 89108, (702) 647–5064.

SUPPLEMENTARY INFORMATION: On January 22, 1996, a lease was issued to the Lady of Victory Catholic Church for a church site pursuant to the Recreation and Public Purposes Act (43 CFR 2740) for the following described land, as well as additional lands to be retained as reflected in case file N–57698, comprising 5.0 acres:

Mount Diablo Meridian, Nevada

T. 22 S., R. 61 E.,
Sec. 14: W½E½NW¼NE¼NW¼.

The church site has been reconfigured as reflected by a subsequent classification dated October 20, 1997, the lessee relinquished the above described portion of the lease on February 11, 1996. Carl Volkmar has requested the parcel in an exchange. The lands are segregated for exchange purposes by notation to the public land records and will remain closed to other forms of disposition.

Pursuant to Recreation and Public Purpose Act of July 25, 1979 (43 CFR 2740), classification of the above described lands, serial number N–57698, is hereby terminated. And in

accordance with section 206 of the Federal Land Policy and Management Act of October 21, 1976, (43 CFR 2200), and the Federal Land Exchange Facilitation Act of August 20, 1988, (43 CFR Parts 2090 and 2200), the land will remain closed to all other forms of appropriation including the mining and mineral laws, pending disposal of the land by exchange.

Dated: July 6, 1998.

Rex Wells,

Assistant Field Office Manager, Division of Lands.

[FR Doc. 98–19006 Filed 7–15–98; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–957–00–1420–00: G8–0253]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 16 S., R. 3 E., accepted May 15, 1998
T. 18 S., R. 13 E., accepted May 19, 1998
T. 20 S., R. 29 E., accepted June 11, 1998
T. 1 S., R. 36 E., accepted June 23, 1998
T. 9 S., R. 39 E., accepted April 27, 1998
T. 15 S., R. 1 W., accepted May 7, 1998
T. 16 S., R. 2 W., accepted May 26, 1998
T. 22 S., R. 7 W., accepted June 23, 1998

Washington

T. 9 S., R. 16 E., accepted June 30, 1998
T. 11 S., R. 2 W., accepted May 22, 1998

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1515 S.W. 5th Avenue, Portland, Oregon 97201, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, (1515 S.W. 5th Avenue) P.O. Box 2965, Portland, Oregon 97208.

Dated: July 8, 1998.

Robert D. DeViney, Jr.,

Chief, Branch of Realty and Records Services.

[FR Doc. 98–19004 Filed 7–15–98; 8:45 am]

BILLING CODE 4310–33–M

INTERNATIONAL TRADE COMMISSION

Temporary Closure of the Law Library

AGENCY: United States International Trade Commission.

ACTION: Temporary closure to the public of the Commission's Law Library.

SUMMARY: Because of painting, carpeting, and renovation, the Commission's Law Library will be closed to the public beginning Monday, July 20, 1998, and will be reopened to the public on Monday, August 17, 1998.

FOR FURTHER INFORMATION CONTACT: Steven J. Kover or Maureen E. Bryant, Law Librarians, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3287.

Issued: July 10, 1998.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–18968 Filed 7–15–98; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Pursuant to 28 CFR 50.7, notice is hereby given that on June 29, 1998, a proposed Consent Decree in *United States* v. *Michigan Department of Transportation*, Civil Action No. 98–72712 was lodged with the United States District Court for the Eastern District of Michigan.

The United States has asserted, in a civil complaint under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.*, that the Michigan Department of Transportation is a potentially responsible party at the Clare Water Supply Superfund Site in the City of Clare, Clare County, Michigan.

Under the proposed Consent Decree, the Michigan Department of Transportation has agreed to pay $150,000.00 to the Hazardous Waste Superfund, representing its share of responsibility at the Site and an appropriate premium.

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 Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Michigan Department of Transportation*, Civil Action No. 98–72712, D.J. Ref. 90–11–2–1212/1.

The Consent Decree may be examined at the Office of the United States Attorney for the Eastern District of Michigan, 211 West Fort Street, Suite 2001, Detroit, MI 48226–3211; at the Region 5 Environmental Protection Agency Library, Reference Desk, 77 W. Jackson Boulevard, Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street, N.W., 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, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $5.75 (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. 98–18900 Filed 7–15–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Amendment to Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Under Section 122(d)(2) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9622(d)(2), and 28 CFR 50.7, notice is hereby given that

on July 2, 1998, a proposed Amendment to Consent Decree in *United States* v. *City of North Miami, Florida,* Case No. 91–2834–CIV–RYSKAMP, was lodged with the United States District Court for the Southern District of Florida.

The Amendment to Consent Decree seeks to amend the Consent Decree for the Munisport Landfill Site, North Miami, Dade County, Florida, to incorporate the provisions of a Record of Decision (ROD) Amendment issued by the United States Environmental Protection Agency on September 5, 1997. The ROD Amendment provides for no further action under CERCLA.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Amendment to Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *City of North Miami,* D.J. Ref. 90–11–3–624.

The Amendment to Consent Decree may be examined at Florida International University, North Campus Library, 3000 North East 145th Street, North Miami, Florida, 33181–3601, at the United States Environmental Protection Agency Records Center, 61 Forsyth Street, SW, Atlanta, Georgia, 30303 Phone (404) 562–8862, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the Amendment to 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 enclose a check in the amount of $2.50 (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. 98–18899 Filed 7–15–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that a consent decree in *United States* v. *County of Oswego, et al.,* Civil Action No. *87–CV–0994* (FJS/GLS) (N.D.N.Y.) was lodged with the United States District Court for the Northern District of New York on June 24, 1998.

The proposed consent decree resolves claims asserted by the United States, on behalf of the U.S. Environmental Protection Agency (''EPA''), against forty parties (''Settling Defendants'') under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. §§ 9606, 9607. The claims sought to recover past and future response costs and to obtain an order requiring the Settling Defendants to implement the selected remedy for Operable Unit One at the Volney Landfill Superfund Site (''Site'') in the Town of Volney, New York. The United States alleged that, under Section 107(a) of CERCLA, 42 U.S.C. 9607(a), various municipalities were liable as current owners and former owners and operators of the Site, and various private parties were liable as generators that arranged for their wastes to be disposed at the Site.

The proposed Consent Decree requires the County of Oswego to implement the selected remedy for the Site at an estimated cost of $7 million. The United States' past response costs of $1.8 million will be reimbursed by the County of Oswego, five municipalities that are former owners and operators of the facility, and thirty-three other parties that generated hazardous substances found on the Site. The Settling Defendants will also pay EPA's future response costs associated with the Site and will reimburse the Department of the Interior $6,500 for assessing potential damage to natural resources.

The Department of Justice will accept written comments relating to the proposed consent decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044 and refer to *United States* v. *County of Oswego, et al.,* (N.D.N.Y.), DJ # 90–11–3–268A.

Copies of the proposed consent decree may be examined at the Office of the United States Attorney for the Northern District of New York, 45 Broadway, Room 231, Albany, NY 12207; at the U.S. Environmental Protection Agency, Region II, 290 Broadway, New York, NY 10007–1866; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the consent decree may also be obtained in person or by mail at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. When requesting a copy of the consent decree by mail, please enclose a check in the amount of $69.60 (twenty-five cents per page reproduction costs) payable to the ''Consent Decree Library.''

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice.

[FR Doc. 98–18902 Filed 7–15–98; 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

In accordance with Departmental policy, 28 CFR § 50.7, and Section 122 of CERCLA, 42 U.S.C. 9622, notice is hereby given that on June 18, 1998, a proposed Consent Decree in *United States* v. *Reilly Industries, Inc.,* Civil Action No. 5:98 CV 1409, was lodged with the United States District Court for the Northern District of Ohio, Eastern Division. This consent decree represents a settlement of claims brought by the United States, pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.,* against Reilly Tar and Chemical Corporation for reimbursement of response costs and injunctive relief in connection with the Reilly Tar and Chemical Corporation Superfund Site (''Site'') located in Tuscarawas County, Ohio.

Under this settlement with the United States, Reilly Industries will implement the remedy for the Site as set forth in the Record of Decision issued by the United States Environmental Protection Agency in March 1997, and pay $400,000 in reimbursement of response costs incurred by the United States Environmental Protection Agency at the Site. In addition, Reilly Industries will pay all future costs for this response action, including U.S. EPA's oversight costs.

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 of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Reilly Industries, Inc.,* D.J. Ref. 90–11–2–1282.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Northern District of Ohio, 1800 Bank One Center, 600 Superior Avenue, Cleveland, OH

44114–2600, at the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60604–3590, and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 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, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $19.75 (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. 98–18901 Filed 7–15–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on May 19, 1998, Knight Seed Company, Inc., 151 W. 126th Street, Burnsville, Minnesota 55337, made application by renewal to the Drug Enforcement Administration to be registered as an importer of marihuana (7360), a basic class of controlled substance listed in Schedule I.

This application is exclusively for the importation of marihuana seed which will be rendered non-viable and used as bird seed.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above, and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: July 2, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–18894 Filed 7–15–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated January 21, 1998, and published in the **Federal Register** on February 12, 1998, (63 FR 7181), Knoll Pharmaceutical Company, 30 North Jefferson Road, Whippany, New Jersey 07981, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Dihydromorphine (9145)	I
Hydromorphone (9150)	II

The firm plans to produce bulk product and finished dosage units for distribution to its customers.

DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Knoll Pharmaceutical Company to manufacture the listed controlled substances is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: June 30, 1996.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–18895 Filed 7–15–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJP)–1185]

RIN 1121–ZB22

State and Local Domestic Preparedness Equipment Support Program

AGENCY: Office of Justice Programs, Office for State and Local Domestic Preparedness Support (OSLDPS), Justice.

ACTION: Request for proposals.

SUMMARY: The Office for State and Local Domestic Preparedness Support is soliciting grant applications from Chief Executive Officers (CEO) in targeted jurisdictions; e.g., selected counties and cities, to fund the acquisition of certain types of equipment in the following categories: personal protective equipment, and detection, decontamination, and communications equipment. This equipment will be needed by first responders; i.e., fire services, emergency medical services, hazardous materials response units, and law enforcement agencies, to respond to a terrorist incident and the use of weapons of mass destruction.

DATES: Applications for funding must be received by the Office for State and Local Domestic Preparedness Support not later than July 17, 1998.

ADDRESSES: Applications must be mailed to: Office for State and Local Domestic Preparedness Support, 810 7th St., NW, Washington, D.C. 20531.

FOR FURTHER INFORMATION CONTACT: The National Criminal Justice Reference Service (NCJRS) at 1–800–688–4252 or the U.S. Department of Justice Response Center at 1–800–421–6770.

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under Public Law 105–119; the Departments of Commerce, Justice, and State; the

Judiciary; and the Related Agencies Appropriations Act of 1998.

Background

The title for this grant funding program is the State and Local Domestic Preparedness Equipment Support Program (SLDPESP).

Grant Offering: OSLDPS is soliciting competitive grant applications from the Chief Executive Officers (CEO) in the 120 most populous jurisdictions in the nation. OSLDPS will provide $12 million for grant funding, and will make awards based on the demonstrated need CEO's state in their proposals. A panel of experts will review the grant applications and submit the panel's ratings for each complete application. Eligible applicants are assigned to a group (Group A, B, or C). Eligible applicants in Group A may apply for funding not to exceed $500,000, Group B not to exceed $250,000, and Group C not to exceed $150,000. Approximately 46 grant awards will be made; 10 awards in Group A, 16 awards in Group B, and 20 awards in Group C. Eligible applicants and assigned groups are listed in the following section. The Office of Justice Programs reserves the right to award a lesser or greater amount than that specified in the application.

Eligible Applicants

Eligible applicants and groups are the Chief Executive Officers (CEO) in the following list of cities and counties. The maximum award amount each group may apply for is identified in parenthesis next to the Group heading:

Group A ($500,000)

1—Los Angeles County, CA
2—City of New York, NY
3—Cook County, IL
4—City of Los Angeles, CA
5—Harris County, TX
6—City of Chicago, IL
7—San Diego County, CA
8—Orange County, CA
9—Maricopa County, AZ
10—Wayne County, MI
11—Dade County, FL
12—Dallas County, TX
13—City of Houston, TX
14—King County, WA
15—Philadelphia City/County, PA
16—San Bernardino County, CA
17—Santa Clara County, CA
18—Cuyahoga County, OH
19—Pima County, AZ
20—Suffolk County, NY
21—Middlesex County, MA
22—Allegheny County, PA
23—Alameda County, CA
24—Nassau County, NY
25—Broward County, FL
26—Riverside County, CA
27—Bexar County, TX
28—Tarrant County, TX
29—City of San Diego, CA
30—Oakland County, Ml
31—Sacramento County, CA
32—Hennepin County, MN
33—City of Dallas, TX
34—City of Phoenix, AZ
35—City of Detroit, MI
36—St. Louis County, MO
37—Franklin County, OH
38—Erie County, NY
39—City of San Antonio, TX
40—Milwaukee County, WI

Group B ($250,000)

41—Palm Beach County, FL
42—Westchester County, NY
43—Hamilton County, OH
44—Honolulu City/County, HI
45—Hillsborough County, FL
46—Fairfax County, VA
47—Pinellas County, FL
48—Clark County, NV
49—Shelby County, TN
50—Contra Costa County, CA
51—Bergen County, NJ
52—DuPage County, IL
53—Marion County/Indianapolis, IN
54—City of San Jose, CA
55—Montgomery County, MD
56—Essex County, NJ
57—Salt Lake County, UT
58—Prince George's County, MD
59—Francisco County/City, CA
60—Macomb County, MI
61—Baltimore County, MD
62—City of Baltimore, MD
63—Monroe County, NY
64—Orange County, FL
65—Worcester County, MA
66—Fresno County, CA
67—Duval County/Jacksonville, FL
68—Montgomery County, PA
69—Ventura County, CA
70—Middlesex County, NJ
71—Jefferson County, KY
72—Essex County, MA
73—Fulton County, GA
74—San Mateo County, CA
75—Jefferson County, AL
76—City of Columbus, OH
77—City of Boston, MA
78—Jackson County, MO
79—EL Paso County, TX
80—Norfolk County. VA

Group C ($150,000)

81—Pierce County, WA
82—City of Milwaukee, WI
83—Travis County, TX
84—Oklahoma County, OK
85—City of Memphis, TN
86—Multonomah County, OR
87—Kern County, CA
88—Montgomery County, OH
89—Monmouth County, NJ
90—Dekalb County, GA
91—Bucks County, PA
92—Hudson County, NJ
93—Delaware County, PA
94—City of El Paso, TX
95—Lake County, IL
96—Mecklenberg County, NC
97—Summit County, OH
98—Tulsa County, OK
99—City of Seattle, WA
100—Nashville/Davidson County, TN
101—Kent County, MI
102—Camden County, NJ
103—Bristol County, MA
104—San Joaquin County, CA
105—City of Cleveland, OH
106—Snohomish County, WA
107—Bernalilo County, NM
108—Union County, NJ
109—City of Austin, TX
110—New Orleans Parish/City, LA
111—Ramsey County, MN
112—Denver County, CO
113—Lake County, IN
114—Cobb County, GA
115—Onondaga County, NY
116—Lucas County, OH
117—Jefferson Parish, LA
118—Wake County, NC
119—Passaic County, NJ
120—Jefferson County, CO

Application Procedures

A. Problem Statement

The applicant must provide a statement describing the jurisdiction's terrorist vulnerability and threat assessment.

B. Equipment Needs

The applicant must provide an assessment of equipment needs of the fire service, law enforcement, emergency medical services, and hazardous materials response and prioritize requested equipment in the following categories: personal protective equipment, detection and decontamination equipment, and communications equipment.

C. Previous Funding

Identify other Federal support for equipment. A demonstrated need is the single most significant criteria for funding consideration. It is assumed that previous equipment support received from other Federal agencies for this type of equipment should have reduced the need for additional equipment.

D. Goals and Objectives

The applicant must provide a description of the goals and objectives of the jurisdiction's plan to acquire equipment and describe how the equipment will enhance operations.

E. Implementation and Evaluation Plan

The applicant must provide a program implementation plan for equipment acquisitions and deadlines for completion of each increment of the procurement process.

F. Additional Resources

Applicants are encouraged to leverage other resources at the State and local level, in support of its equipment acquisition plan.

G. Equipment Coordination Certification

The Chief Executive Officer (CEO) of the jurisdiction must sign a certificate confirming that the application was coordinated with the fire service, emergency medical services, hazardous materials response units, and law enforcement agencies, operating within the jurisdiction.

Application Kits

Application kits will be mailed to the Chief Executive Officers in each of the targeted jurisdictions. Interested eligible applicants are encouraged to contact the National Criminal Justice Reference Service (NCJRS) at 1–800–688–4252 to ensure that they receive an application kit for the State and Local Domestic Preparedness Equipment Support Program. An application kit containing the necessary forms will be mailed to eligible applicants upon request.

Laurie Robinson,

Assistant Attorney General, Office of Justice Programs.

[FR Doc. 98–18971 Filed 7–15–98; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Request for Cooperative Agreement Applications (RFAs)

AGENCY: National Institute of Corrections, U.S. Department of Justice.

ACTION: Request for Cooperative Agreement Applications (RFAs).

SUMMARY: The U.S. Department of Justice (DOJ), National Institute of Corrections (NIC) announces the availability of funds in FY '98 for a single cooperative agreement to fund various evaluation components of a ''Drug-Free State Demonstration Project: A Program That Will Help to Reduce or Eliminate the Use of Illegal Drugs in Prisons.'' While up to ten awards will be made to States, the District of Columbia, and Territorial Departments of Corrections under this project, only one award will be made for the evaluation tasks.

Purpose: The National Institute of Corrections is seeking proposals for single cooperative agreement to evaluate the applications that States, the District of Columbia, and Territorial Departments of Corrections will be making to insure that each application that receives an award under the drug-free demonstration project includes an effective evaluation methodology, part of which will involve pre and post drug testing. The organization performing this task will also evaluate the feasibility of establishing common data elements for as many of the state/territorial awardees as possible, and assist in communicating these elements to the Departments of Corrections. After the awards are made, this organization will oversee the evaluation efforts of each awardee, conduct one visit to meet with the evaluators at each site, and compile both an interim and final evaluation report of the entire project for the NIC.

Authority: Pub. L. 93–415.

Funds Availability/Funding Limits: Funding for the evaluation tasks in this project is estimated at approximately $300,000. The award will be limited to a maximum of $300,000 (direct and indirect costs). The evaluation component of this project will not exceed three years and six months in length.

Deadline for Receipt of Application: 4:00 pm Eastern time on August 31, 1998. At The National Institute of Corrections, 320 First Street, NW, Washington, DC 20534. Applications shall be considered as meeting the deadline if they are either: (1) Received on or before the deadline date: or (2) postmarked on or before the deadline date and received in time for orderly processing. Applicants must obtain a legible dated receipt from a commercial carrier or the U.S. Postal Service in lieu of a postmark. Private metered postmarks will not be acceptable as a proof of timely mailing. Late applications will be returned to the sender.

Address and Further Information: Requests for the application kit, which also includes further details on the project's objectives, selection criteria, etc., should be directed to: Judy Evens, Control Office, National Institute of Corrections, 320 First Street., NW, Room 5007, Washington, DC 20534 or by calling 1–800–995–6423, ext. 159 or 202–307–3106, ext. 159. E-Mail: jevens@bop.gov.

All technical and programmatic information under this program announcement should be directed to: Allen Ault, Chief, Special Projects, National Institute of Corrections, 320 First Street, NW, Washington, DC 20543 or by calling 1–800–995–6423, ext. 125 or 202–307–3106, ext. 125. E-Mail: aault@bop.gov.

Eligible Applicants: An eligible applicant is any organization with experience in the evaluation of criminal justice programs and policies. The organization must also have experience with drug testing.

Review of Consideration: Applications received under this announcement will be subject to a review process by the NIC.

Number of Awards: One (1).

NIC Application Number: 98K45. This number should appear as a reference line on your cover letter and also in box 11 of Application for Federal Assistance (Standard Form 424). The cover letter should be addressed to Morris L. Thigpen, Director, NIC, 320 First Street, NW, Washington, DC 20543.

Other Information: Applicants are advised that narrative description of their program, not including the budget narrative and resumes of key staff, *should not* exceed 15 double spaced pages.

The Catalogue of Federal Domestic Assistance number is: 16–602.

Morris L. Thigpen,

Director, National Institute of Corrections.

[FR Doc. 98–19020 Filed 7–15–98; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Request for Cooperative Agreement Applications (RFA)

AGENCY: National Institute of Corrections, U.S. Department of Justice.

ACTION: Request for Cooperative Agreement Applications (RFAs).

SUMMARY: The U.S. Department of Justice (DOJ), National Institute of Corrections (NIC) announces the availability of funds in FY' 98 for several cooperative agreements to fund a ''Drug-Free State Demonstration Project: A Program That Will Help to Reduce or Eliminate the Use of Illegal Drugs in Prisons.'' Several awards will be made available to States, the District of Columbia, and Territorial Departments of Corrections.

Purpose: The National Institute of Corrections is seeking proposals for cooperative agreements to assist States, the District of Columbia, and Territorial Departments of Corrections interested in testing a variety of project strategies, with multiple targets and a combination of outcome measurement(s), whose goal will be to reduce or eliminate the use of illegal drugs in prisons. Proposed project sites will choose from a variety of components, including but not limited to new technologies for drug detection, drug treatment programs, drug testing, developing policies and sanctions, personnel training, telephone monitoring and intelligence systems. In their efforts to reduce illegal drugs in

prison, proposals may include one or a combination of targets, including visitors, vendors, volunteers, staff and inmates working in outside contact areas. Outcomes may be measured based on changes in pre- and post-inmate drug testing results, along with other measurements, such as reduced inmate on staff and inmate on inmate assaults. NIC is seeking a geographic and programmatic diversity which allows for duplication of results, befitting a demonstration project of this nature. NIC is also seeking projects that can be replicated in different jurisdictions if proven successful, as well as projects that show a specific added value to current policies and procedures. In this regard, linkages to other programs (e.g., between detection and treatment) will be an important part of a successful project.

Authority: Pub. L. 93–415.

Funds Available: Funding for this project is estimated at approximately $4.2 million for several cooperative agreements to be awarded to States, the District of Columbia, and Territorial Departments of Corrections.

Funding Limits: The awards will be limited to a maximum of $500,000 each (direct and indirect costs). *An individual project can not exceed three years in length.*

Funds can not be used for construction, or to acquire or build real property.

Deadline for Receipt of Application: 4:00 PM Eastern time on August 31, 1998. At The National Institute of Corrections, 320 First Street, NW, Washington, DC 20534. Applications shall be considered as meeting the deadline if they are either: (1) Received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for orderly processing. Applicants must obtain a legible dated receipt from a commercial carrier or the U.S. Postal Service in lieu of a postmark. Private metered postmarks will not be acceptable as a proof of timely mailing. Late applications will be returned to the sender.

Address and Further Information: Requests for the application kit, which also includes further details on the project's objectives, selection criteria, etc., should be directed to: Judy Evens, Control Office, National Institute of Corrections, 320 First Street, NW, Room 5007, Washington, DC 20534 or by calling 1–800–995–6423, ext. 159 or 202–307–3106, ext 159. E-Mail: jevens@bop.gov.

All technical and programmatic information under this program announcement should be directed to: Allen Ault, Chief, Special Projects, National Institute of Corrections, 320 First Street, NW, Washington, DC 20543 or by calling 1–800–995–6423, ext. 125 or 202–307–3106, ext. 125. E-Mail: aault@bop.gov.

Eligible Applicants: An eligible applicant is any State, the District of Columbia, or Territorial Department of Corrections.

Review Consideration: Applications received under this announcement will be subject to a review process established by NIC.

Number of Awards: Approximately ten (10).

NIC Application Number: 98K46. This number should appear as a reference line on your cover letter and also in box 11 of Application for Federal Assistance (Standard Form 424). The cover letter should be addressed to Morris L. Thigpen, Director, NIC, 320 First Street, NW, Washington, DC 20543.

Other Information: Applicants are advised that the narrative description of their program, not including the budget and budget narrative, *should not* exceed 12 double spaced pages.

The Catalogue of Federal Domestic Assistance number is: 16–602.

Morris L. Thigpen,

Director, National Institute of Corrections.

[FR Doc. 98–19021 Filed 7–15–98; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

July 13, 1998.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Todd R. Owen ({202} 219–5096 ext. 143) or by E-Mail to Owen-Todd@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ({202} 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Title: Notice of Alleged Safety and Health Hazards.

OMB Number: 1218–0064 (reinstatement).

Form Number: OSHA–7 Form.

Frequency: On occasion.

Affected Public: Individuals or households.

Number of Respondents: 28,713.

Total Responses: 28,713.

Estimated Time per Respondent: 25 minutes for complaints received via fax or letter; 15 minutes for complaints received via telephone.

Total Burden Hours: 8,155.

Total annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: Section 8(f)(1) of Public Law 91–596, the Occupational Safety and Health Act of 1970 (OSH Act), states that an employee or employee representative who believes that a violation of an occupational safety and health standard exists, or that an imminent danger exists, may request an inspection by notifying the Secretary *in writing.* The OSH Act requires that the notice set forth the ground for the compliant with *''reasonable particularity''* and that it be signed.

Agency: Office of the Assistant Secretary for Policy.

Title: The survey form of the National Agricultural Workers Survey.

OMB Number: 1225–0044 (Revision of currently approved collection).

Frequency: Annually (The survey is administered in three 10–12 week cycles each year. Approximately one third of the farmworker respondents are interviewed each cycle).

Affected Public: Farm employers and farm employees.

Number of Respondents: 6,000 (includes both farmworkers and farm employees).

Total Responses: 6,000.

Estimate Time per Respondent: 20 minutes for farm employers, one hour for farm employees.

Total annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The National Agricultural Worker Survey (NAWS) provides data to the public and private service programs and data analysts which are used for planning, implementing and evaluation of farmworker programs. Analysis provides an understanding of the manpower resources available to the U.S. agriculture and the importance of immigrants in the labor market. It is the only national source of data on the demographic and employment characteristics of farmworkers. This action also requests OMB approval to conduct a one year pilot with a larger sample size and an enhanced focus on occupational health.

Todd R. Owen,

Departmental Clearance Officer.

[FR Doc. 98–18984 Filed 7–15–98; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,475; NAFTA–02331]

Ocean Beauty, Astoria, Oregon; Notice of Negative Determination Regarding Application for Reconsideration

By application dated May 27, 1998, the company and the United Food and Commercial Workers Local 555 requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA) and NAFTA-Transitional Adjustment Assistance (NAFTA–TAA), applicable to workers and former workers of the subject firm. The denial notices applicable to workers of the subject firm located in Astoria, Oregon, were signed on May 12, 1998. The TAA and NAFTA–TAA decisions were published in the **Federal Register** on June 22, 1998 (63 FR 33958) and May 29, 1998 (63 FR 29431), respectively.

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAT petition, filed on behalf of workers of Ocean Beauty, Astoria, Oregon, producing processed fish was denied because the ''contributed importantly'' group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. The ''contributed importantly'' test is generally demonstrated through a survey of the workers' firm's customers. None of the Ocean Beauty customers responding to the survey reported purchases of imported processed fish during the relevant time period (1997–1998).

The NAFTA–TAA petition for the same worker group was denied because criteria (3) and (4) of the group eligibility requirements in paragraph (a)(1) of Section 250 of the Trade Act, as amended, were not met. There were no company or customer imports of processed fish from Mexico or Canada, nor was there a shift in production from the workers' firm to Mexico or Canada.

In support of their application for reconsideration, the petitioners assert that some of the significant customers of Ocean Beauty were not surveyed concerning their import purchases of raw fish. An official of Ocean Beauty was contacted to respond to this allegation. Ocean Beauty has confirmed that customers identified by the petitioners were major customers, but they did not decrease their purchases of processed fish from Ocean Beauty during the relevant time period.

The petitioners provided U.S. Department of Agriculture import data for various fish to support their claim that increased imports of like products were significant enough to facilitate a reduction in market value of the finished product causing production expenses to exceed sales receipts. The Department, however, must examine the import purchases of processed fish by customers of the subject firm.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decisions. Accordingly, the application is denied.

Signed at Washington, DC, this 8th day of July, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–18981 Filed 7–15–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,658]

IRI International Corporation Formerly Cardwell International Limited, El Dorado, Kansas; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on June 15, 1998 in response to a worker petition which was filed on behalf of workers at IRI International Corporation, El Dorado, Kansas.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, D.C., this 27th day of June 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–18982 Filed 7–15–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,596]

Koehler Manufacturing Company (Marlborough, MA); Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on June 1, 1998 in response to a worker petition which was filed on behalf of workers at Koehler Manufacturing Company, Marlborough, Massachusetts.

The petitioner has requested that the petition be withdrawn. Consequently,

further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 2nd day of July 1998.

Linda G. Poole,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 98–18980 Filed 7–15–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,606]

Mid-Atlantic Regional Joint Board, UNITE, Bristol, VA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Acting Director of the Office of Trade Adjustment Assistance for workers at the Mid-Atlantic Regional Joint Board, UNITE, Bristol, Virginia. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–34,606; Mid-Atlantic Regional Joint Board, UNITE, Bristol, Virginia (July 9, 1998).

Signed at Washington, D.C., this 9th day of July, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–18978 Filed 7–15–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 211(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 27, 1998.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 27, 1998.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 29th day of June, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 06/29/98]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
34,692	Sivaco Rolling Mills (Wrks)	Sivaco, NY	06/17/98	Wire Products.
34,693	Teledyne Electronic Tech. (Comp)	Scottsdale, AZ	06/17/98	Solid State Relays.
34,694	TKC Apparel, Inc (Comp)	Reidsville, GA	06/16/98	Ladies' Tops and Knit Shirts.
34,695	Energizer Power System (Comp)	Gainesville, FL	06/12/98	Rechargeable Batteries.
34,696	Calgon Carbon Corp (USWA)	Pittsburgh, PA	06/10/98	Calgon Pellets.
34,697	Daniel Green Co (Comp)	Dolgeville, NY	06/15/98	Men's, Ladies' & Children's Slippers.
34,698	National Garment Co (Wrks)	Columbia, MO	06/11/98	Children's Apparel.
34,699	Heinz Pet Products (Wrks)	Kankakee, IL	06/16/98	Machinery to Mfg Pet Foods.
34,700	Willamette Industries (Comp)	Saginaw, OR	06/19/98	Softwood Lumber.
34,701	Gorge Lumber Co (Wkrs)	Portland, OR	06/15/98	Lumber.
34,702	United Design Corp (Comp)	Wewoka, OK	06/15/98	Giftware.
34,703	Eagle Moulding (Wkrs)	Dorris, CA	05/28/98	Wood Mouldings, Baseboards, Etc.
34,704	Bennett Uniform Mfg (Comp)	Greensboro, NC	06/19/98	Uniforms.
34,705	Stanly Knitting Mills (Comp)	Mountain City, TN	06/18/98	Sport Caps.
34,706	Tarantola Trucking Co (Comp)	Flemington, NJ	06/09/98	Trucking Service for Lipton Co.
34,707	Bindicator Co (Wkrs)	Port Huron, MI	06/10/98	Level Control Units.
34,708	Sanyo E and E Corp (Comp)	San Diego, CA	06/16/98	Refrigerators and Freezers.
34,709	Gilbert and Bennett Mfg. (USWA)	Blue Island, IL	06/18/98	Light Gauge Wire Fencing & Fence Post.
34,710	Nemanco, Inc (Wrks)	DeKalb, MS	06/18/98	Jeans and Slacks.
34,711	Kellermann Logging Co (Wrks)	Joseph, OR	06/17/98	Finished Logs.
34,712	American Meter Co (IUE)	Erie, PA	06/19/98	Natural Gas Meters.
34,713	NCC Industries, Inc (UNITE)	New York, NY	06/18/98	Bras.

[FR Doc. 98–18976 Filed 7–15–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02409]

JPM Company (Winnsboro, SC); Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on May 20, 1998, in response to a petition submitted on that date and filed on behalf of workers of the JPM Company, Winnsboro, South Carolina.

The petitioner requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 2nd day of July 1998.

Linda G. Poole,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 98–18979 Filed 7–15–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02406]

Koehler Manufacturing Company, Marlborough, MA; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on May 20, 1998 in response to a petition filed on behalf of workers at Koehler Manufacturing Company, Marlborough, Massachusetts.

In a letter dated June 25, 1998, the petitioner requested that the petition for NAFTA–TAA be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

A trade adjustment assistance investigation (TA–W–34,596) is currently underway to determine if workers are eligible to apply for benefits under the Trade Act of 1974. The investigation was instituted on June 1, 1998. A final determination should be made within 60 days of the institution date.

Signed at Washington, DC, this 2nd day of July 1998.

Linda G. Poole,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 98–18977 Filed 7–15–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

National Advisory Committee on Occupational Safety and Health; Notice of Meeting

Notice is hereby given of the date and location of the next meeting of the National Advisory Committee on Occupational Safety and Health (NACOSH), establish under section 7(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the Act. NACOSH will hold a meeting on August 5 and 6, 1998 in Room N5437 A–D of the Department of Labor Building located at 200 Constitution Avenue NW, Washington, D.C. The meeting is open to the public and will begin at 1:00 p.m. lasting until approximately 4:45 p.m. the first day, August 5. On August 6, the meeting will begin at 8:30 a.m. and last until approximately 4:00 p.m.

Agenda items will include: a brief overview of current activities in the Occupational Safety and Health Administration (OSHA) and the National Institute for Occupational Safety and Health (NIOSH), a discussion of the standards development process, a discussion of targeting and performance measurement systems, and a review of the 11(c) task force report. Other subjects to be discussed include: needlestick injuries, privitization of some DOE facilities, a literature search related to incentive programs, as well as reports from workgroups.

Written data, views or comments for consideration by the committee may be submitted, preferably with 20 copies, to Joanne Goodell at the address provided below. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting. Because of the need to cover a wide variety of subjects in a short period of time, there is usually insufficient time on the agenda for members of the public to address the committee orally. However, any such requests will be considered by the Chair who will determine whether or not time permits. Any request to make an oral presentation should state the amount of time desired, the capacity in which the person would appear, and a brief outline of the content of the presentation. Individuals with disabilities who need special accommodations should contact Theresa Barry (phone: 202–219–8615, extension 106; FAX: 202–219–5986) one week before the meeting.

An official record of the meeting will be available for public inspection in the OSHA Technical Data Center (TDC) located in Room N2625 of the Department of Labor Building (202–219–7500). For additional information contact: Joanne Goodell, Occupational Safety and Health Administration (OSHA); Room N–3641, 200 Constitution Avenue NW, Washington, D.C., 20210 (phone: 202–219–8021, extension 107; FAX: 202–219–4383; e-mail joanne.goodell@osha-no.osha.gov).

Signed at Washington, D.C., this 10th day of July, 1998.

Charles N. Jeffress,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 98–18983 Filed 7–15–98; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98–096]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that Thermo Fibergen, Inc., of Bedford, Massachusetts, has applied for an exclusive license to practice the invention disclosed in U.S. Patent No. 5,772,912, entitled ''Anti-Icing Fluid or Deicing Fluid,'' which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective

grant of a license should be sent to NASA Ames Research Center.

DATES: Responses to this notice must be received by September 14, 1998.

FOR FURTHER INFORMATION CONTACT: Kathleen Dal Bon, Patent Counsel, Ames Research Center, Mail Stop 202A–3, Moffett Field, CA 94035–1000, telephone (650) 604–5104.

Dated: July 8, 1998.

Edward A. Frankle,

General Counsel.

[FR Doc. 98–19019 Filed 7–15–98; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Submission for OMB Review; Comment Request

July 9, 1998.

The National Endowment for the Arts, on behalf of the Federal Council on the Arts and the Humanities, has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the National Endowment for the Arts' Indemnity Administrator, Alice Whelihan (202/682–5574).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the National Endowment for the Arts, Office of Management and Budget, Room 10235, Washington, D.C. 20503 (202/395–7316), within thirty days of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;

—Enhance the quality, utility and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Agency: National Endowment for the Arts.

Title: Application for Indemnification.

OMB Number: 3135–0094.

Frequency: renewed every four years.

Affected Public: Non-profit, tax exempt organizations, individuals and governments.

Number of Respondents: 40 per year.

Estimated Time per Respondent: 45 hours.

Total Burden Hours: 1800.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs (Operating/Maintaining Systems or Purchasing Services): $75,000.

Description: This application form is used by non-profit, tax-exempt organizations (primarily museums), individuals and governmental units to apply to the Federal Council on the Arts and the Humanities (through the National Endowment for the Arts) for indemnification of eligible works of art and artifacts, borrowed from abroad for exhibition in the United States, or sent from the United States for exhibition abroad. The indemnity agreement is backed by the full faith and credit of the United States. In the event of loss or damage to an indemnified object, the Federal Council certifies the validity of the claim and requests payment from Congress. 20 U.S.C. 973 *et seq.* requires such an application and specifies information which must be supplied. This statutory requirement is implemented by regulation at 45 CFR 1160.4.

Murray Welsh,

Director, Administrative Services.

[FR Doc. 98–18970 Filed 7–15–98; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Panel, Dance Section (Creation & Presentation category) to the National Council on the Arts will be held on August 4–7, 1998. The panel will meet from 9:00 a.m. to 6:00 p.m. on August 4, 5, and 6, and from 9:30 a.m. to 4:00 p.m. on August 7, in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC, 20506. A portion of this meeting, from 9:30 a.m. to 11:00 a.m. on August 7, will be open to the public for a policy discussion on field issues and needs, Leadership Initiatives, Millennium projects, and guidelines.

The remaining portions of this meeting, from 9:00 a.m. to 6:00 p.m. on August 4, 5, and 6, and from 10:30 a.m. to 4:00 p.m. on August 7, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 14, 1998, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: July 8, 1998.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 98–18896 Filed 7–15–98; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Panel, Theater/Musical Theater (B) Section (Creation & Presentation category) to the National Council on the Arts will be held on August 10–14, 1998. The panel will meet from 9:30 a.m. to 6:30 p.m. on

August 10, 11, and 12, from 10:00 a.m. to 6:00 p.m. on August 13, and from 9:30 a.m. to 5:30 p.m. on August 14, in Room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506. A portion of this meeting, from 10:00 a.m. to 12:00 p.m. on August 13, will be open to the public for a policy discussion on field issues and needs, Leadership initiatives, Millennium projects, and guidelines.

The remaining portions of this meeting, from 9:30 a.m. to 6:30 p.m. on August 10, 11, and 12, from 12:00 p.m. to 6:00 p.m. on August 13, and from 9:30 a.m. to 5:30 p.m. on August 14, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman on May 14, 1998, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: July 8, 1998.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 98–18897 Filed 7–15–98; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Bioengineering and Environmental Systems (1189); Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Bioengineering & Environmental Systems.

Date and Time: July 30, 1998, 8:00 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Rooms 320 & 330, Arlington, VA 22230.

Contact Person: Dr. A. Fred Thompson, Program Director, Environmental Technology Program, Division of Bioengineering & Environmental Systems, Room 565, NSF, 4201 Wilson Blvd., Arlington, VA 22230 703/306–1318.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Industrial Ecology proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government Sunshine Act.

Dated: July 10, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–18928 Filed 7–15–98; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection: 10 CFR Part 39—Licenses and Radiation Safety Requirements for Well Logging.

3. How often the collection is required: Applications for new licenses and amendments may be submitted at any time. Applications for renewal are submitted every 10 years. Reports are submitted as events occur.

4. Who will be required or asked to report: Applicants for and holders of specific licenses authorizing the use of licensed radioactive material in well logging.

5. The number of annual responses: 518 NRC licensees and 1,036 Agreement State licensees.

6. The number of annual respondents: 51 NRC licensees and 102 Agreement State licensees.

7. The number of hours needed annually to complete the requirement or request: Approximately 3.4 hours annually per respondent for applications and reports, plus approximately 232 hours annually per recordkeeper. The industry total burden is 11,094 hours annually for NRC licensees and 24,004 hours annually for Agreement State licensees.

8. An indication of whether Section 3507(d), Pub. L. 104–13 applies: Not applicable.

9. Abstract: NRC regulations in 10 CFR Part 39 establish radiation safety requirements for the use of radioactive material in well logging operations. The information in the applications, reports and records is used by the NRC staff to ensure that the health and safety of the public is protected and that licensee possession and use of source and byproduct material is in compliance with license and regulatory requirements.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov) under the FedWorld collection link on the home page tool bar. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer by August 17, 1998.

Erik Godwin, Office of Information and Regulatory Affairs (3150–0130), NEOB–10202, Office of Management and Budget, Washington, DC 20503

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 8th day of July, 1998.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–18959 Filed 7–15–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–269, 50–270, and 50–287]

Duke Energy Corporation; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–38, DPR–47, and DPR–55, issued to Duke Energy Corporation (the licensee), for operation of the Oconee Nuclear Station, Units 1, 2, and 3, respectively, located in Seneca, South Carolina.

If approved, the proposed amendments would allow temporary noncompliance with the Penetration Room Ventilation System air flow surveillance requirements of Technical Specification (TS) 4.5.4.1.b.1 until modifications can be completed to support testing in accordance with ANSI Standard N510–1975, as required by the TSs. These modifications are scheduled to be completed on all three units by August 30, 1998.

Oconee TS 4.5.4.1.b.1 requires that every 18 months the Penetration Room Ventilation System fans be demonstrated to operate at design flow (+/-10 percent) when tested in accordance with ANSI Standard N510–1975. ANSI Standard N510–1975 requires that a pitot tube velocity-traverse method be used in accordance with Section 9 of the American Conference of Government Industrial Hygienists Industrial Ventilation requirements. The flow measurement method that has been used since original construction uses installed orifice plates to measure the air flow.

However, during a Safety System Engineering Inspection at Oconee for the Control Room Ventilation System (CRVS) and Penetration Room Ventilation System (PRVS), the NRC identified a violation that indicated that the PRVS fans were not tested in accordance with the TSs and ANSI Standard N510–1975. This violation was included in Inspection Report Nos. 50–269/98–03, 50–270/98–03, and 50–287/09–03 dated May 4, 1998. By letter dated June 4, 1998, the licensee denied the violation based on a belief that the use of the orifice plates met the requirements of the TSs and the ANSI standard. As part of the review of this issue, the licensee conducted flow measurement tests using a pitot tube array and attempted (unsuccessfully) to locate calibration data for the orifices. The licensee was unable to develop an alternate method to measure flow that was reliable.

By letter dated July 6, 1998, the NRC informed the licensee that its denial of the violation was rejected. Consequently, the licensee entered TS 3.0, which required that all three units be in the hot shutdown condition within 12 hours, and requested that a Notice of Enforcement Discretion (NOED) be granted. The NOED was issued on July 8, 1998, and will be effective until the proposed amendments that were submitted on July 8, 1998, are processed. Since the proposed amendments are designed to complete the review process and implement the TS changes, pursuant to the NRC's policy regarding exercising discretion for an operating facility set out in Section VII.c of the ''General Statement of Policy and Procedures for NRC Enforcement Actions'' (Enforcement Policy), NUREG–1600, and be effective for the period until the issuance of the related TS amendments, these circumstances require that the amendments be processed under exigent circumstances.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

[This proposed change has been evaluated against the standards in 10 CFR 50.92 and has been determined to involve no significant hazards, in that operation of the facility in accordance with the proposed amendments would not:]

1. Involve a significant increase in the probability or consequences of an accident previously evaluated:

This proposed change does not increase the probability of an accident evaluated in the SAR [Safety Analysis Report] because:

This evaluation addresses the potential impact of revising Technical Specification 4.5.4.1.b.1 to include a note to allow a temporary noncompliance with this surveillance requirement until August 30, 1998, to complete the necessary modifications to enable flow testing in accordance with ANSI N510–1975.

As described in the technical justification (Attachment 3 [of the July 8, 1998, submittal]), the use of orifice plates in the Oconee Units 1, 2, and 3 Penetration Room Ventilation Systems (PRVSs) to measure the flow from the PRVS fans, in lieu of ANSI N510–1975 requirements, does not increase the probability of an accident evaluated in the SAR because this condition is not an accident initiator. There is no physical change to any plant structures, systems, or components (SSCs) or operating procedures. Neither electrical power systems, nor important to safety mechanical SSCs will be adversely affected. The PRVS has been evaluated as operable for normal and accident conditions. There are no shutdown margin, reactivity management, or fuel integrity concerns. There is no increase in accident initiation likelihood, therefore analyzed accident scenarios are not impacted.

This proposed change does not increase the probability of a malfunction of equipment important to safety evaluated in the SAR because:

As described in the technical justification, the use of orifice plates which are currently used in Oconee Units 1, 2, and 3 to measure the flow from the PRVS fans, in lieu of ANSI N510–1975 requirements, does not increase the probability of a malfunction of equipment important to safety. This activity does not physically change or modify any plant system, structure, or component. The PRVS is QA [quality assurance] condition 1 (QA–1) and is required to filter reactor building leakage which enters the East and West Penetration Rooms. This activity does not change any test procedures. Nothing is being done to inhibit the integrity or function of the PRVS. No valve manipulations, electrical alignments, or system configurations are required.

This change does not increase the consequences of an accident evaluated in the SAR because:

This activity will not adversely affect the ability to mitigate any SAR described accidents. The PRVS flow is within the system design limits as measured by the orifice plates. In addition, Duke [Duke Energy Corporation] has performed bounding analyses which demonstrate that the carbon filter efficiency is still within the Technical Specification limits at higher flow rates. Therefore, Oconee Units 1, 2, and 3 will meet system design requirements for the PRVS. There is no adverse impact on containment integrity, radiological release pathways, fuel

design, filtration systems, main steam relief valve setpoints, or radwaste systems.

This change does not increase the consequences of a malfunction of equipment important to safety evaluated in the SAR because:

No safety related or important to safety equipment necessary to place or maintain the plant in safe shutdown condition will be impacted by allowing a temporary noncompliance with this surveillance requirement until August 30, 1998, to complete flow testing in accordance with ANSI N510–1975. As described in the technical justification, the use of orifice plates which are currently used in Oconee Units 1, 2, and 3 to measure the flow from the PRVS fans, in lieu of ANSI N510-1975 requirements, does not increase the consequences of a malfunction of equipment important to safety. The PRVS flow is within the system design limits as measured by the orifice plates. In addition, Duke has performed bounding analyses which demonstrate that the carbon filter efficiency is still within the Technical Specification limits at higher flow rates. Therefore, Oconee Units 1, 2, and 3 will meet system design requirements for the PRVS. There is no adverse impact on containment integrity, radiological release pathways, fuel design, filtration systems, main steam relief valve setpoints, or radwaste systems.

(2) Create the possibility of a new or different kind of accident from any kind of accident previously evaluated:

This change does not create the possibility for an accident of a different type than any evaluated in the SAR because:

There is no increased risk of unit trip, or challenge to the Reactor Protection System (RPS) or other safety systems. There is no physical effect on the plant, i.e. none on Reactor Coolant System (RCS) temperature, boron concentration, control rod manipulations, core configuration changes, and no impact on nuclear instrumentation. There is no increased risk of a reactivity excursion. No new failure modes or credible accident scenarios are postulated from this activity.

This change does not create the possibility for a malfunction of a different type than any evaluated in the SAR because:

There is no physical change to the plant SSCs or operating procedures. This change does not involve any plant changes, electrical lineups, or valve manipulations. Analyses have been performed which demonstrate that the PRVS can perform its intended safety function relying on the orifice plates to measure flow. No new equipment or components were installed. No credible new failures are postulated.

(3) Involve a significant reduction in a margin of safety.

This change does not involve a significant reduction in the margin of safety because:

No function of any importance to safety SSC will be adversely affected or degraded as a result of continued operation. No safety parameters, setpoints, or design limits are changed. There is no adverse impact to the nuclear fuel, cladding, RCS, or required containment systems.

Duke has concluded, based on the above, that there are no significant hazards considerations involved in this amendment request.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 14-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 17, 1998, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene.

Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention

and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendments are issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Mr. J. Michael McGarry, III, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(l)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated July 8, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room, located at the Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina.

Dated at Rockville, Maryland, this 13th day of July 1998.

For the Nuclear Regulatory Commission.

David E. LaBarge,

Senior Project Manager Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–18960 Filed 7–15–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Knowledge and Abilities Catalog Revision; Notice of Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: NUREG–1122, ''Knowledge and Abilities Catalog for Nuclear Power Plant Operators: Pressurized Water Reactors,'' and NUREG–1123, ''Knowledge and Abilities Catalog for Nuclear Power Plant Operators: Boiling Water Reactors,'' were developed in 1985 to assist operator licensing examiners in the development of content valid written and operating examinations to administer to reactor plant operators and senior operators. The Knowledge and Abilities (K/A) catalogs were revised in 1995 to resolve inconsistencies between the two catalogs and inconsistencies in content within the K/A catalogs. Revision 1 also incorporated evolutionary changes in the operator licensing program and revised definition of operator's tasks within facility licensee's organizations.

The current Revision 2 incorporates corrections to the Revision 1 catalogs that were identified during examination development associated with a proposed revision of 10 CFR 55 and implementation of NUREG–1021, Interim Rev. 8, ''Operator Licensing Examination Standards for Power Reactors.'' Revision 2 of the respective K/A catalogs has been prepared for use in conjunction with the implementation of NUREG–1021, final Revision 8, but may be used immediately.

Copies of NUREG–1122, Revision 2 and NUREG–1123, Revision 2 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and/or copying for a fee in the NRC Public Document Room. These documents are also available at the NRC Web Site, http://www.nrc.gov. See the links under ''Technical Reports in the NUREG Series'' on the ''Reference Library'' page.

FOR FURTHER INFORMATION CONTACT: Frank Collins, Mail Stop O9–D24, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, telephone (301) 415–3173.

Dated at Rockville, Maryland, this 9th day of July, 1998.

For the Nuclear Regulatory Commission.

Richard J. Eckenrode,

Acting Chief, Operator Licensing and Human Performance Branch, Division of Reactor Controls and Human Factors, Office of Nuclear Reactor Regulation.

[FR Doc. 98–18958 Filed 7–15–98; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Visits to Facilities

AGENCY: Postal Rate Commission.

ACTION: Notice of cancellation of visit.

SUMMARY: A Commission visit to the Pitney Bowes facility in Stamford, CT has been canceled. Notice of the visit was announced at 63 FR 32209, June 23, 1998.

DATES: The visit had been scheduled for Monday, July 20, 1998.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, Postal Rate Commission, Suite 300, 1333 H Street, NW, Washington, DC 20268–0001, (202) 789–6720.

Dated: July 13, 1998.

Cyril J. Pittack,

Acting Secretary.

[FR Doc. 98–19015 Filed 7–15–98; 8:45 am]

BILLING CODE 7710–FW–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Employer Service and Compensation Reports.
(2) *Form(s) submitted:* UI–41, UI–41a.
(3) *OMB Number:* 3220–0070.
(4) *Expiration date of current OMB clearance:* 9/30/1998.
(5) *Type of request:* Revision of a currently approved collection.
(6) *Respondents:* Business or other for profit.
(7) *Estimated annual number of respondents:* 30.
(8) *Total annual responses:* 4,500.
(9) *Total annual reporting hours:* 600.
(10) *Collection description:* The reports obtain the employee's service and compensation for a period subsequent to those already on file and the employee's base year compensation. The information is used to determine the entitlement to and the amount of benefits payable.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 98–18898 Filed 7–15–98; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Existing collection in use without an OMB Number: Rule 8c–1; SEC File No. 270–455; OMB Control No. 3235—new

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for Approval.

Rule 8c–1 generally prohibits a broker-dealer from using its customers' securities as collateral to finance its own trading, speculating, or underwriting transactions. More specifically, the rule states three main principles: first, that a broker-dealer is prohibited from commingling the securities of different customers as collateral for a loan without the consent of each customer; second, that a broker-dealer cannot commingle customers' securities with its own securities under the same pledge; and third, that a broker-dealer can only pledge its customers' securities to the extent that customers are in debt to the broker-dealer. *See* Securities Exchange Act Release No. 2690 (November 15, 1940); Securities Exchange Act Release No. 9428 (December 29, 1971). Pursuant to Rule 8c–1, respondents must collect information necessary to prevent the rehypothecation of customer accounts in contravention of the rule, issue and retain copies of notices to the pledgee of hypothecation of customer accounts in accordance with the rule, and collect written consents from customers in accordance with the rule. The information is necessary to ensure compliance with the rule, and to advise customers of the rule's protections.

There are approximately 258 respondents per year (*i.e.,* broker-dealers that carry or clear customer accounts that also have bank loans) that require an aggregate total of 5,805 hours to comply with the rule. Each of these approximately 258 registered broker-dealers makes an estimated 45 annual responses, for an aggregate total of 11,610 responses per year. Each response takes approximately 0.5 hours to complete. Thus, the total compliance burden per year is 5,805 burden hours. The approximate cost per hour is $20, resulting in a total cost of compliance for the respondents of $116,100 (5,805 hours @ $20 per hour).

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W., Washington, DC 20549.

Dated: July 9, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–18904 Filed 7–15–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Extension: Rule 15Bc3–1; Form MSDW; SEC File No. 270–98; OMB Control No. 3235–0087

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension on the following rule: Rule 15Bc3–1.

Rule 15Bc3–1 under the Securities Exchange Act of 1934 provides that a notice of withdrawal from registration with the Commission as a bank municipal securities dealer must be filed on Form MSDW.

Approximately 20 respondents will utilize this notice annually, with a total burden of 10 hours. The average number of hours necessary to comply with the requirements of Rule 15Bc3–1 is .5 hours. The average cost per hour is approximately $40. Therefore, the total cost of compliance for the respondents is $400.

Providing the information on the notice is mandatory in order to withdraw from registration with the Commission as a bank municipal securities dealer. The information contained in the notice will not be confidential. An agency may not

conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the estimated burden hours should be directed to the following persons: (i) Deck Officer for the Securities and Exchange Commission, Officer of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 10, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–18908 Filed 7–15–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23310; 812–7860]

McLaughlin, Piven, Vogel Securities, Inc.; Notice of Application

July 10, 1998.

AGENCY: Securities and Exchange Commission (''SEC'' or the ''Commission'').

ACTION: Notice of application for an exemption under the Investment Company Act of 1940 (the ''Act'').

SUMMARY OF APPLICATION: Applicant requests a conditional order under section 9(c) exempting applicant from the disqualification provisions of section 9(a) solely with respect to a securities related injunction entered against one of applicant's affiliates. The conditional order would permit applicant to act as sponsor, depositor, and principal underwriter for one or more unit investment trusts.

FILING DATES: The application was filed on January 30, 1992, and amendments to the application were filed on March 5, 1992, August 6, 1992, October 6, 1992, March 4, 1997, and January 20, 1998.

HEARING OF NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC 5:30 p.m. on August 4, 1998, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writers'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, 30 Wall Street, New York, New York 10005.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Attorney Advisor, at (202) 942–0574, or Nadya B. Roytblat, Assistant Director, (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 by writing to SEC's Public Reference Branch at 450 Fifth Street, N.W., Washington, D.C. 20549, tel. (202) 942–8090.

Applicant's Representatives

1. Applicant is a New York corporation engaged in the underwriting and securities brokerage business. Applicant is a member of the National Association of Securities Dealers, Inc. and is registered with the Commission as a broker-dealer.

2. Subject to receiving the requested exemption, applicant proposes to serve as sponsor, principal underwriter, and depositor for the Traditional Value Guaranteed Income Trust, Series 1, and subsequent series (the ''Trust''), a unit investment trust to be registered under the Act. Units of the Trust are to be registered for sale to the public under the Securities Act of 1933 (the ''1933 Act''). Applicant also may serve as sponsor, principal underwriter, and depositor for future series of the Trust and for other unit investment trusts that it may organize in the future.

3. James J. McLaughlin (''McLaughlin'') is the Senior Vice-President and a director of applicant, and owns 52.32% of applicant's shares. In 1973, the Commission brought an action alleging that McLaughlin, an assistant sales vice president of Paragon Securities Incorporated of New York (''Paragon''), acting in concert with others, violated section 17(a) of the 1933 Act and sections 10(b), 15(a), 15(b), and 15(c) of the Securities Exchange Act of 1934 (the ''1934 Act''), and various rules thereunder in connection with Paragon's activities as a broker-dealer. *Securities and Exchange Commission* v. *Paragon Securities Co.,* Civil Action No. 1120 (D.C. N.J.). On October 3, 1974, without admitting or denying wrongdoing, McLaughlin consented to the entry of a permanent injunction (the ''Injunction'') enjoining him from conduct in violation of such provisions. In addition, McLaughlin agreed to disgorge $8,450. Applicant represents that since 1974, McLaughlin has not been the subject of any proceedings, or allegations of violations of state or federal securities laws other than those discussed in the application.[1]

4. Applicant is not currently in violation of the provisions of section 9(a), as it does not serve as an investment adviser or depositor of any registered investment company, or principal underwriter for any registered open-end company, registered unit investment trust, or registered face-amount certificate company. Because McLaughlin has been permanently enjoined from engaging in certain conduct in connection with his activities at paragon, however, applicant is prohibited under section 9(a)(3) of the Act from acting as an investment adviser or depositor of any registered investment company, or principal underwriter for any registered open-end company, registered unit investment trust, or registered face-amount certificate company. Accordingly, applicant seeks the requested relief solely with respect to the Injunction so that it may engage in the proposed activities.

Applicant's Legal Analysis

1. Section 9(a)(2) of the Act, in pertinent part, prohibits any person who have been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of

[1] Although certain actions have been brought against applicant and McLaughlin, these actions do not trigger the disqualification provisions of section 9(a) of the Act. In December 1992, applicant and McLaughlin, without admission of liability or wrongdoing, entered into a settlement agreement in the amount of $250,000. The complaint arose out of plaintiff's purchase of bonds issued by the Washington Public Power Supply System and alleged violations by the defendants of section 10(b) of the 1934 Act and rule 10b–5 thereunder, as well as common law fraud and breach of contract. In addition, thirteen separate orders and sanctions have been imposed against applicant by state regulatory agencies during the period from 1982 to the present. The violations included acting as a broker-dealer in states where applicant was unregistered; the sale of securities by unlicensed employees of applicant; and the failure to file required documents. In addition, in November 1995, the New York Stock Exchange affirmed a hearing panel decision in which Applicant was fined $15,000 for including in its registered representative employment agreements a provision which waived arbitration. In December 1996, the SEC affirmed the hearing panel's decision.

a security from acting as an ''employee, officer, director, member of an advisory board, investment adviser, or depositor of any registered investment company, or principal underwriter for any registered open-end company, registered unit investment trust, or registered face amount certificate company.'' A company with an employee or other affiliated person ineligible to serve in any of these capacities under section 9(a)(2) is similarly ineligible under section 9(a)(3).

2. Section 9(c) provides that the Commission shall grant an application for an exemption from the disqualification provisions of section 9(a), either unconditionally or on an appropriate temporary or other conditional basis, if it is established that these provisions, as applied to the applicant, are unduly or disproportionately severe or that the conduct of the applicant has been such as not to make it against the public interest or protection of investors to grant such application.

3. As a result of the Injunction, applicant is subject to the disqualification provisions of section 9(a). Applicant asserts that the application of such provisions to applicant is unduly and disproportionately severe. Applicant notes that almost twenty years have passed since the activities which gave rise to the Injunction. Applicant states that since the entry of the Injunction in 1974, McLaughlin has not been enjoined by any court, or sanctioned by the Commission, any self-regulatory organization, or any state securities commission. Applicant also states that to the best of its knowledge, there have been no customer complaints against McLaughlin, nor any securities related administrative or legal proceedings involving McLaughlin, except as described in footnote 1.

4. Applicant further asserts that McLaughlin's conduct has been such as to not make it against the public interest or protection of investors to grant the requested relief. The conduct that give rise to the Injunction was not in any way related to investment company activities.

5. Applicant states that it will undertake every effort to ensure that McLaughlin does not and will not serve in any capacity related to applicant's role as depositor for any registered investment company or as principal underwriter for any registered unit investment trust. Applicant states that McLaughlin's role as an officer and director of applicant will not involve him in investment company activities. Applicant states that McLaughlin is semi-retired and is no longer involved in the daily management or operation of applicant. Moreover, applicant has consented to the conditions set forth below, which are intended to ensure that McLaughlin will not serve in any capacity related to applicant's role as sponsor, depositor, and principal underwriter for a unit investment trust.

6. In addition, applicant retained outside counsel to conduct an independent review of compliance by applicant with the state and federal securities laws affecting applicant's business as a broker-dealer and of the adequacy of the procedures applicant has in place to provide reasonable assurance of compliance. Based upon its review, counsel made a number of recommendations with respect to applicant's compliance and supervisory procedures, including, among other things, the revision of applicant's supervisory manual and education of applicant's personnel. In a letter dated August 4, 1992, counsel certified that applicant's revised compliance procedures and practices, if adhered to, should provide reasonable assurance that applicant will comply with the provisions of the 1934 Act, the laws of the states relating to broker-dealer and broker-dealer representative registration, and the provisions of the Act in connection with applicant's proposed role as sponsor, principal underwriter, and depositor for unit investment trusts.[2]

Applicant's Conditions

Applicant agrees that any order granted by the Commission pursuant to the application will be subject to the conditions set forth below:

1. McLaughlin will not serve in any capacity directly related to providing investment advice to, or acting as depositor for, any registered investment company, or acting as principal underwriter for any registered open-end company, registered unit investment trust, or registered face amount certificate company without making further application to the Commission. McLaughlin will not sell interests in investment companies sponsored by applicant, or for which applicant serves as principal underwriter or depositor.

2. Applicant's legal department or its counsel shall develop, and applicant shall adopt, written procedures designed to ensure that McLaughlin does not and will not serve in any capacity directly related to providing investment advice to, or acting as depositor for, any registered investment company, or acting as principal underwriter for any registered open-end company, registered unit investment trust, or registered face amount certificate company. Such procedures shall include, but shall not be limited to, the following: (a) applicant shall notify in writing its Chairman of the Board, its owners and executive officers, its Chief Compliance Officer, and all employees working under the direct supervision of McLaughlin (collectively, the ''Affected Personnel'') immediately upon the granting of any order issued pursuant to the application, with respect to the responsibilities of and restrictions on McLaughlin. Applicant shall notify in writing any new member of the Affected Personnel upon his or her employment by or affiliation with applicant, with respect to the responsibilities of and restrictions on McLaughlin. Receipt of notification will be acknowledged in writing by each recipient and returned to applicant; and (b) applicant will obtain, on an annual basis, written certification from each member of the Affected Personnel that he or she has not discussed any matters relating to the Trust with McLaughlin.

3. McLaughlin will not attend any future meetings of applicant's board of directors where the operations of any investment company for which applicant acts as depositor or principal underwriter, including the Trust, are on the agenda.

4. McLaughlin shall be excused from all meetings of applicant's board of directors where the operations of any investment company for which applicant acts as depositor or principal underwriter, including the Trust, are proposed to be discussed prior to any such discussion.

5. Applicant's general counsel or chief executive officer will certify on an annual basis that applicant and McLaughlin have complied with the procedures referred to above and the conditions set forth above.

6. The certificates, acknowledgements of notification, and procedures referred to in these conditions shall be maintained as part of the records of applicant and shall be available for inspection by the Commission staff.

7. Applicant's general counsel or its chief executive officer will certify on an annual basis that applicant has complied with the procedures and practices referred to in the Certification and that such procedures and practices continue to be sufficient to insure applicant's compliance with the state

[2] The certification is attached as an exhibit to the amendment to the application filed on August 6, 1992. An additional certification is attached as an exhibit to the amendment to the application filed on January 20, 1998. The two certifications are referred to collectively as the ''Certification.''

and federal securities laws noted in the Certification.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–18965 Filed 7–15–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–26894]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

July 10, 1998.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 4, 1998, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of fact or law that are disputed. A person who so requests will be notified by any hearing, if ordered, and will receive a copy of any notice or order in the matter. After August 4, 1998, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

New Century Energies, Inc., et al. (70–9199)

New Century Energies, Inc. (''New Century''), a registered holding company, Public Service Company of Colorado, a wholly owned electric and gas subsidiary of New Century (''PSC Colorado''), and, NC Enterprises, Inc. (''NC Enterprises''), a wholly owned nonutility subsidiary of New Century, all located at 1225 17th Street, Denver, Colorado 80202–5533 (''Applicants''), have filed an application-declaration under sections 6(a), 7, 9(a), 10, and 12(f) of the Act and rules 43 and 54 under the Act.

Applicants seek authority to: (1) Acquire 50% of the equity securities of WYCO Development LLC (''WYCO''), a nonutility company formed for the purpose of facilitating the transactions described herein, for an amount not to exceed $26 million; (2) purchase, through WYCO, the Front Range and Powder River Lateral Expansion (''Powder River'') pipeline projects from PSC Colorado and Wyoming Interstate Company, a non-associated company, respectively; and (3) lease the Front Range and Powder River pipelines back to PSC Colorado and Wyoming Interstate Company.

PSC Colorado provides electric and retail natural gas distribution service to the Denver and Front Range metropolitan areas. PSC Colorado is subject to regulation by the Colorado Public Utilities Commission (''Colorado PUC''). The Front Range Pipeline construction, sale and lease is subject to review and approval by the Colorado PUC. The Powder River lease is subject to review and approval by the Federal Energy Regulatory Commission.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–18966 Filed 7–15–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40189; File No. SR–AMEX–97–39]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Minimum Trading Increments (Rule 127)

July 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 October 22, 1997, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities Exchange Commission (''SEC'' or ''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 and to grant accelerated approval to the proposed rule chage.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Exchange Rule 127 to add Commentary .03 to permit members to trade on the Exchange in increments smaller than 1/16 in order to match bids and offers displayed in other markets for the purpose of preventing Intermarket Trading System (''ITS'') trade-throughs. The text of the proposed rule change is available at the Office of the Secretary, the Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspect of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Amex Rule 127 currently provides that the minimum fractional change for transactions on the Exchange is 1/16 for securities selling above 1/4, and 1/32 for securities selling below 1/4. In May 1997, the Exchange extended trading in sixteenths to all Amex equity securities selling at $10 or higher, having previously only traded securities priced under $10 in sixteenths. The Exchange took this step based on its belief that trading in increments of 1/16 promotes investor protection by enhancing price improvement opportunities on the Exchange.

Since Amex's initiative and subsequent initiatives by other markets to implement sixteenths trading, certain third market makers have disseminated quotations in a limited number of listed securities in fractions smaller than a sixteenth. In addition, ITS has been modified to permit commitments to trade to be sent through ITS in fractions as small as 1/64. This ITS modification permits Amex members to send orders

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

via ITS to a market displaying a quotation in 1/32 or 1/64.

The Exchange believes it is important to provide its members with flexibility to effect transactions on the Exchange at a smaller increment than 1/16 for the purpose of matching a displayed bid or offer in another market at such smaller increment (i.e., 1/32 or 1/64) for the purpose of preventing ITS trade-thoughs.[3] For example, if the best bid on the Amex is 8 and a bid of 8 1/32 is displayed through ITS in another market center, the Amex specialist or floor broker may execute a market or marketable limit order at 8 1/32 in order to match the other market's bid. Amex will retain its existing requirement that limit orders can only be entered increments no smaller than 1/16.[4]

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5)[5] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

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 that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[6] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5)[7] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public.[8]

Recently, there has been a movement within the industry to reduce the minimum trading and quotation increments imposed by the various self-regulatory organizations (''SROs''). Last year, the Amex, Nasdaq Stock Market (''Nasdaq''), New York Stock Exchange (''NYSE'') and Chicago Board Options Exchange (''CBOE'') reduced their minimum increments.[9] Currently, exchange rules provide for trading of most equity securities in increments as small as 1/16 of a dollar.[10] Amex represents that several third market makers have begun quoting securities in increments smaller than those approved for trading on the primary markets. The proposed rule change will provide Amex with the limited flexibility it needs to address this development and remain competitive with these markets.

The size of the minimum trading increment for securities traded through the facilities of Nasdaq is determined by the technical limitations of the Nasdaq system. Currently, Nasdaq systems are capable of trading securities priced under $10 in increments as fine as 1/32 of one dollar. Securities priced over $10 may be traded in increments as fine as 1/16 of one dollar.[11] As a result, the Commission recognizes that Nasdaq third market makers may trade exchange listed securities priced at less than $10 in increments finer than sixteenths. Nasdaq has informed the Commission that Nasdaq third market makers are currently posting quotes for listed securities in increments finer than sixteenths.[12] The proposed amendment to Exchange Rule 127, will allow Amex traders to match prices disseminated by Nasdaq market makers that may better the Amex quote by an increment finer than the current 1/16 minimum increment. In addition, the Commission notes that the proposal will enable the Exchange to match prices disseminated by other exchanges in the event that another exchange were to reduce its minimum trading increment.[13] The proposal should assist Exchange members to fulfill their obligation to obtain the best price for their customers. Accordingly, the Commission believes that it is reasonable for the Exchange to allow trading in increments finer than sixteenths for the limited purpose of preventing an ITS trade-through.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Approval of the proposal will provide Amex members with the ability to match a better bid or offer made available through ITS, thereby helping to prevent ITS trade-throughs and ensuring the best execution of Amex customer orders. The Commission notes that this proposal is similar to a proposal by the NYSE that was published for the full notice and comment period, no comments were made on that proposal.[14] Therefore, the Commission believes it is consistent with Section 6(b)(5) and Section 19(b)(2) of the Act to grant accelerated approval to the proposed rule change.[15]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the

[3] *See* Amex Rule 236.

[4] *But see* Amex Rule 127, Commentary .01, which provides that Standard & Poor's Depositary Receipts® and MidCap SPDRs™ may trade on the Exchange in increments as small as 1/64 of one dollar.

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] In approving this rule change, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] Securities Exchange Act Release No. 38571 (May 5, 1997), 62 FR 25682 (May 9, 1997) (approving an Amex proposal to reduce the minimum trading increment to 1/16 for certain Amex-listed equity securities); Securities Exchange Act Release No. 38678 (May 27, 1997), 62 FR 30363 (June 6, 1997) (approving a Nasdaq rule change to reduce the minimum quotation increment to 1/16 for certain Nasdaq-listed securities); Securities Exchange Act Release No. 38897 (Aug. 1, 1997), 62 FR 42847 (Aug. 8, 1997) (approving a NYSE rule change to reduce the minimum quotation increment to 1/16 for certain NYSE-listed securities) and Securities Exchange Act Release No. 39159 (Sept. 30, 1997), 62 FR 52365 (Oct. 9, 1997) (approving a CBOE rule change to reduce the minimum quotation increment to 1/16 for stocks).

[10] *Id.*

[11] The Commission notes that any change to the minimum increment for securities traded through the facilities of the Nasdaq system would be considered a change in an existing order-entry or trading system of an SRO. Accordingly, the NASD would be required to file a proposed rule change under Section 19(b)(3)(A) of the Act to change its minimum increment.

[12] Telephone conversation between Andrew S. Margolin, Senior Attorney, Nasdaq, Gene Lopez, Vice President, Trading and Market Services, Nasdaq and David Sieradzki, Attorney, Commission on July 8, 1998.

[13] To change its minimum increment, an exchange would be required to file a proposed rule change that would become immediately effective under Section 19(b)(3)(A) of the Act.

[14] *See* Securities Exchange Act Release No. 38897 (Aug. 1, 1997), 62 FR 42847 (Aug. 8, 1997).

[15] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

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 Exchange. All submissions should refer to File No. SR–Amex–97–39 and should be submitted by August 6, 1998.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–Amex–97–39) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–18962 Filed 7–15–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40186; File No. SR–CBOE–98–20]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. and Amendment No. 1 Thereto Relating to RAES Eligibility Requirements for OEX and DJX Options

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 18, 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. On June 24, 1998, the CBOE filed an amendment to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to add a new sub-paragraph to CBOE Rule 24.17, *RAES Eligibility in OEX and DJX*, that would allow a Market-Maker to participate on the Retail Automatic Execution System (''RAES'') in both options on the Standard & Poor's 100 Index (''OEX'') and options on the Dow Jones Industrial Average (''DJX'') during the same calendar month by meeting the eligibility requirements for OEX alone, DJX alone, or eligibility requirements which consider the percentage of transactions and contracts a Market-Maker transacted in OEX and DJX combined. The text of the proposed rule change is available at the Office of the Secretary, the CBOE, and at the Commission.

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

Currently, CBOE Rule 24.17(b)(v) sets forth four eligibility requirements that a Market-Maker must meet before he can participate in RAES in either OEX or DJX. One of these requirements is that the Market-Maker must execute at least seventy-five percent of his Market-Maker contracts for the preceding calendar month in the option class in which the Market-Maker is participating on RAES. Because of the high percentage requirement, a Market-Maker who qualifies to participate in RAES in either OEX or DJX would not be able to qualify to participate in RAES in the other class. In fact, the Exchange believes the seventy-five percent requirement is so high that it serves as a disincentive for a Market-Maker on one side of the common structure in which OEX and DJX are traded to move into the other side of the structure to trade the other option product for fear that the Market-Maker will no longer qualify for RAES in his primary trading area.

The Exchange believes, however, that a strength of the Market-Maker system is the ability of Market-Makers to move from one trading pit to another to provide liquidity and capital when market conditions warrant. Because the traders in OEX or DJX stand right next to each other in the same physical trading structure, they are in the best position to provide added liquidity and capital to the products by moving from one side of the trading structure to the other. Consequently, the Exchange determined to add new sub-paragraph (b)(vi) to Rule 24.17 to allow a Market-Maker to qualify for RAES in both OEX and DJX during the same calendar month (1) by meeting the individual requirements for OEX, (2) by meeting the individual requirements for DJX, or (3) by transacting seventy-five percent of his contracts for the month in both OEX and/or DJX combined and by transacting seventy-five percent of his contracts in OEX and DJX during the month in person. A Market-Maker can participate in RAES in both OEX and DJX during the same calendar month as long as he meets one of the sets of criteria above and as long as the two products continue to be traded at the same physical trading location. It should be noted that in the equity posts on the floor, a Market-Maker may participate in RAES in all classes traded at that post. Although OEX and DJX are technically traded at two separate trading posts, the Market-Makers for each product are separated by a movable railing within the same physical structure. A Market-Maker must be present in the particular trading crowd where the class is traded while he is participating in RAES for that class.

The Exchange proposes to implement this rule change at the beginning of the next calendar month after the rule proposal is approved by the Commission. Finally, the Exchange is proposing to delete current Interpretation .02 because it is no longer relevant now that December 1, 1997 has passed.

2. Statutory Basis

By eliminating a disincentive for Market-Makers, in the physical structure where OEX and DJX are traded, to move between trading pits to provide added liquidity and capital when market conditions warrant, the Exchange believes the proposed rule change is

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[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Timothy H. Thompson, Director, Regulatory Affairs, Legal Department, CBOE, to Deborah Flynn, Attorney, Division of Market Regulation, Commission, dated June 19, 1998 (''Amendment No. 1''). In Amendment No. 1, the CBOE proposes to amend the proposed rule change to add cross-references to new paragraph (b)(vi) where the Rule only refers to paragraph (b)(v) presently. The proposed change will make clear to joint account participants, or the nominee of the member organization, that the requirements of paragraph (b)(v) need not be met in order to participate in the joint account, or in the firm's Retail Automatic Execution System account, if the requirements for paragraph (b)(vi) are met.

consistent with Section 6 of the Act,[4] in general, and with section 6(b)(5),[5] in particular, because it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–98–20 and should be submitted by August 6, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–18905 Filed 7–15–98; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(5).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40187; File No. SR–CHX–98–13]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Inc. Amending the Exchange's Clearing the Post Policy for Cabinet Securities

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 10, 1998, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CHX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend interpretation and policy .02 of CHX Rule 10 of Article XX and amend CHX Rule 11 of Article XX relating to clearing the post and to make permanent the policy contained in Article XX, Rule 11 regarding the ability of oral bids and offers to clear the cabinet post by phone. The text of the proposed rule change is as follows: Additions are italicized; deletions are [bracketed].

ARTICLE XX

Rule 10. Manner of Bidding and Offering.

No change in text.

*** * * Interpretations and Policies**

02. Clearing the Post.

Policy. All orders received by floor brokers or originated by market makers on the floor of the Exchange must effectively clear the post before the orders may be routed to another market, either via the ITS System or through the use of alternative means.

Floor brokers who receive an order on the floor have a fiduciary responsibility to seek a best price execution for such order. This responsibility includes clearing of the Exchange's post prior to routing an order to another market so that other buying and selling interest at the post can be checked for a potential execution that may be as good as or better than the execution available in another market.

Market makers are required to provide depth and liquidity to the Exchange market, among other things. Exchange Rules require that all market maker transactions constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market. In so doing, market makers must adhere to traditional agency/auction market principles on the floor. Transactions by Exchange market makers on other exchanges which fail to clear the Exchange post do not constitute such a course of dealings.

Notwithstanding the above, it is understood that on occasion a customer will insist on special handling for a particular order that would preclude it from clearing the post on the Exchange floor. For example, a customer might request that a specific order be given a primary market execution. These situations must be documented and reported to the Exchange. Customer directives for special handling of all orders in a particular stock or all stocks, however, will not be considered as exceptions to clearing the post policy.

All executions resulting from bids and offers reflected on Instinet terminals resident on the Exchange floor constitute ''orders'' which are ''communicated'' to the Exchange floor. Therefore, all orders resulting from interest reflected on Instinet terminals on the Exchange floor must be handled as any other order communicated to the floor. All such orders must be presented to the post during normal trading hours. All trades between Instinet and Exchange floor members are Exchange trades and must be executed on the Exchange.

Method of Clearing the Post. [Subject to Article XX, Rule 11 relating to cabinet securities,] [t]*T*he Exchange's clearing the post policy requires the floor broker or market maker to be physically present *on the Exchange floor and to be present* at the post. *So long as the floor broker or market maker is physically present on the Exchange floor, a floor broker's or market maker's bids and*

[1] 15 U.S.C. 78s(b)(1) (1994).

[2] 17 CFR 240.19b–4 (1997).

offers may be made by clearing the post by phone provided that such bids and offers are audibly announced at the post through a speaker system maintained by the Exchange. A market maker, after requesting the specialist's market quote, must bid or offer the price and size of his intended interest at the post. A floor broker must clear the post by requesting a market quote from the specialist. If the specialist or any other member who has the post indicates an interest to trade at the price that was bid or offered by the market maker or the price of the floor broker's order (even though that order has not yet been bid or offered), then the trade may be consummated with the specialist (or whomever has the post) in accordance with existing Exchange priority, parity and precedence rules. If the specialist (or any other member who has the post) indicates interest to trade at that price but the member communicating the intended interest, including Instinet interest, determines not to consummate the trade with the specialist or such member, then, to preserve the Exchange's existing priority, parity and precedence rules, the trade may not be done with any other Exchange floor member. (See Article XXX, Rule 2). If the trade is consummated with the specialist or other member who has the post, the specialist (or any customer represented by the specialist) is not required to pay any fees to the broker or market maker in connection with the execution of the order, unless such fee is expressly authorized by an Exchange Rule. If the specialist does not indicate an interest to trade, then the trade may be consummated with another Exchange floor member on the Exchange floor with a resultant Exchange print.

Failure to clear the post may result in a ''trade-through'' or ''trading ahead'' of other floor interest. In addition, failure to properly clear the post may result in a violation of the Exchange's Just and Equitable Trade Principles Rule (Article VIII, Rule 7) and a market maker rule that requires all market maker transactions to constitute a course of dealing reasonably calculated to contribute to the maintenance of a fair and orderly market (Article XXXIV, Rule 1). Failure to properly clear the post may also subject the violator to a minor rule violation under the Exchange's Minor Rule Violation Plan.

Rule 11. Cabinet Securities

Stocks having no designated specialist unit of trading shall be assigned for dealings by use of cabinets and shall be dealt in at a location designated for that purpose.

The Exchange may also designate bonds which are to be dealt in by use of cabinets.

Bids and offers in securities dealt in by use of cabinets shall be written on cards, which shall be filed in the cabinets in the following sequence:

1. According to price, and

2. According to the time received at the cabinet.

Orders in such securities shall be filled according to the bids and offers filed in the cabinets, in the sequence indicated above, except that oral bids and offers in such securities may be made if not in conflict with bids and offers in the cabinets. *Oral bids and offers may be made by clearing the cabinet post by phone provided that such bids and offers are audibly announced at the cabinet post through a speaker system maintained by the Exchange.*

Every card placed in the cabinets shall bear a definite price and number of shares and no mark or identification shall be placed thereon to indicate it is other than a limited order at the price.

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 CHX 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 in the places specified in Item IV below. The CHX 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 make permanent the policy contained in Article XX, Rule 11 regarding the ability of oral bids and offers to clear the cabinet post by phone.[3] The proposed rule change will also amend Article XX, Rule 10 to expand this policy to bids and offers in all securities traded on the trading floor.

Under the proposed rule change, as long as the floor broker or market maker is physically present on the Exchange floor, a floor broker's or market maker's bids and offers in any security traded on the trading floor may be made by clearing the post by phone, provided they are audibly announced at the post through a speaker system maintained by the Exchange. The Exchange has not experienced any adverse effects from the implementation of this policy for cabinet issues, and believes that the differences obtained with the use of a speaker system in cabinet issues should be extended floor wide.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act[4] in that it is designed to prevent fraudulent and manipulative acts and practices and to perfect the mechanism of a free and open market.

(B) Self-Regulatory Organization's Statement on Burden of Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

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 self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions

[3] *See* Securities Exchange Act Release No. 39519 (January 6, 1998), 63 FR 1985 (January 13, 1998) (Order approving proposed rule change SR–CHX–97–28 relating to a six month pilot program for Exchange's clearing the post policy for cabinet securities); and Securities Exchange Act Release No. 40144 (June 30, 1998), 63 FR 37157 (July 9, 1998) (Order approving proposed rule change SR–CHX–98–17 relating to a five month extension of the pilot program for the Exchange's clearing the post policy for cabinet securities).

[4] 15 U.S.C. 78f(b)(5).

should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any 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 Exchange. All submissions should refer to File No. SR–CHX–98–13 and should be submitted by August 8, 1998.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–18906 Filed 7–15–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40191; File No. SR–DTC–98–5]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Shared Control Accounts

July 10, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 7, 1998, The Depository Trust Company (''DTC'') 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 primarily by DTC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to allow DTC to make shared control accounts available to its participants.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

New York State recently enacted revised Article 8 of the Uniform Commercial Code (''UCC''). Revised Article 8 gives priority in certain situations to a pledgee that has control over pledged securities (or other financial assets). According to DTC, a pledgee has control over securities when it has the ability to have the securities sold or transferred without further consent by the pledgor. The control of the pledgee need not be exclusive. The pledgor can retain the right to redeliver or make substitutions for the pledged securities.

Currently, when a participant pledges securities to the pledgee account of a pledgee at DTC, the securities are under the sole control of the pledgee. Therefore, only the pledgee can redeliver or release the securities.

The purpose of the proposed rule change is to make shared control accounts available at DTC as an alternative to the use of pledgee accounts.[3] As a result of the rule change, a DTC participant will be able to establish a shared control account and to designate any DTC pledgee as the pledgee for the shared control account. A pledgee will have control over securities delivered by a participant to the participant's shared control account at DTC because the pledgee will have the ability to redeliver the securities without further consent by the participant. However, the participant also will have the ability to redeliver or to make substitutions for the securities without obtaining the pledgee's release of the securities. DTC states that, except as modified by the procedures for DTC shared control accounts,[4] the operation of a shared control account will be identical to the operation of a DTC pledgee account and all DTC procedures applicable to pledgee accounts are applicable to shared control accounts.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it is consistent with DTC's obligation to safeguard securities and funds in its custody or control or for which it is responsible.[5]

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The proposed rule change was developed through discussions with several participants. No written comments have been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3) of the Act requires that the rules of a clearing agency be consistent with its obligation to safeguard securities and funds in its custody or control or for which it is responsible.[6] The Commission believes that the rule change is consistent with this obligation because the proposal should help facilitate the processing of secured transactions through DTC's facilities. In addition, the operation of shared control accounts will be essentially identical to the operation of pledgee accounts which are currently available at DTC. Therefore, DTC's experience in the operation of pledgee accounts will help enable DTC to operate shared control accounts in a safe and efficient manner.

DTC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice of this filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice because

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[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] Pledgee accounts will continue to be available at DTC.

[4] The procedures for DTC shared control accounts are attached as Exhibit 2 to DTC's proposed rule change (File No. SR–DTC–98–5) which is available for inspection and copying at the Commission's Public Reference Room or through DTC.

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 15 U.S.C. 78q–1(b)(3)(F).

accelerated approval will permit DTC to immediately make shared control accounts available to its participants and to make its procedures reflect revised Article 8 as recently enacted by the State of New York.[7]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–98–5 and should be submitted by August 6, 1998.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–98–5) be and hereby is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–18963 Filed 7–15–98; 8:45 am]

BILLING CODE 8010–01–M

[7] The staff of the Board of Governors of the Federal Reserve System has concurred with the Commission's granting of accelerated approval. Telephone conversation between Kristen Wells, Senior Analyst, Division of Reserve Bank Operations, Board of Governors of the Federal Reserve System, and Jeffrey Mooney, Special Counsel, Division of Market Regulation, Commission (July 9, 1998).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40190; International Series Release No. 1145; File No. SR–EMCC–98–5]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Changing Relating to Warrant Processing

July 10, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby give that on May 28, 1998, the Emerging Markets Clearing Corporation (''EMCC'') 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 primarily by EMCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposal Rule Change

The purpose of the proposed rule change is to provide a mechanism whereby EMCC may process cash payments made with respect to warrants for which there are outstanding fail receive and deliver obligations and to permit EMCC to pair-off outstanding warrant fail receive obligations with fail deliver obligations.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, EMCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposal rule change. The text of these statements may be examined at the places specified in Item IV below. EMCC 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

From time to time, issuers of warrants may declare a money distribution on their warrants (''warrant payment''). If EMCC is notified that a warrant payment has been declared by a warrant issuer, those members with a fail deliver or fail receive obligation relating to such warrant will receive a report from EMCC. The report will specify the amount each member is obligated to pay/receive. EMCC will also instruct the qualified securities depository[2] of each such member to appropriately debit and/or credit each member's account on payable date with the amount(s) specified on the report. (Fail deliver obligations will result in debits, and fail receive obligations will result in credits.)

EMCC will not guarantee warrant payments. EMCC's willingness to pay members with fail receive obligations is contingent on its ability to collect these amounts from members with fail deliver obligations. If a member with a fail deliver obligation does not pay EMCC the cash owed with respect to a warrant payment, the proposed rule change (i) permits EMCC to reverse the payment made to the member with the fail receive obligations that was the original counterparty to the transaction underlying such fail deliver obligation and (ii) obligates the member with the fail deliver obligation that did not pay EMCC such monies owed, to compensate EMCC for such non-payment.

The proposed rule change also provides that the member with the fail receive obligation will be entitled to compensation for its late receipt of the warrant payment if EMCC collects from the member with the fail deliver obligation that failed to make timely payment. The proposed rule change provides that if a member with a fail receive obligation does not receive a warrant payment or if such a warrant payment is reverse and, EMCC has ceased to act for the member with the fail deliver obligation, the member with the fail receive obligation may request that EMCC file a claim for the payment with the estate of the member with the fail deliver obligation. Any such action shall be taken at the sole cost and expense of the member with the fail receive obligation.[3]

EMCC states that, historically, fail rates with respect to warrant transactions are high. Firms would periodically employ a process by which they bilaterally paired-off outstanding warrant receive and deliver obligations

[1] 15 U.S.C. 78s(b)(1).

[2] Currently, the Cedel Bank, Societe anonyme and the Euroclear system, which is operated by the Brussels Office of Morgan Guaranty Trust Company of New York, are the only qualified securities depositories.

[3] This approach is similar to that taken with respect to fail obligations relating to warrants, as set forth in Rule 8, Sections 7(f) and 8(f).

in order to eliminate warrant fail obligations. Since warrants have been eligible at EMCC, EMCC's records also indicate that there is high fail rate with respect to warrant obligations. In order to eliminate there fails, members have requested that EMCC implement a similar process. The proposed rule change would allow EMCC to perform a bilateral pair-off process for warrant obligations.

In order to be eligible to be paired-off, the obligations must be within the same ISIN, and the fail deliver obligations and fail receive obligations must have a contract value of $0. In addition, fail deliver and fail receive obligations will be paired-off only if the quantity of warrants with respect to one or more fail receive obligations (either singly or in the aggregate) is equal to the quantity of warrants with respect to one or more fail deliver obligations (either singly or in the aggregate).

Using the process described above, EMCC will determine which fail deliver and fail receive obligations are to be paired-off and will issue a report to each member identifying such paired-off obligations. EMCC will also instruct the member's qualified securities depository to cancel the previously issued debit and credit instructions relating to such paired-off obligations. At the time the report is distributed to members, their rights or obligations with respect to the paired-off fail deliver and fail receive obligations, under the Rules are extinguished.

Although EMCC becomes the counterparty to all transactions submitted to it, upon receipt of securities by EMCC they are redelivered from EMCC to the original counterparty to the underlying transaction. It is possible that the pair-off process will result in the canceling of the fail obligation of only one of the original counterparties, leaving the corresponding fail obligation open at EMCC. Under these circumstances, EMCC will allocate any warrants received by giving priority first to the oldest fail receive obligation and next to the fail receive obligation relating to the largest number of warrants. EMCC will not allocate any warrants which would not fully satisfy a fail receive obligation. For example, if EMCC receives 10 warrants from a member with a fail deliver obligation (where the corresponding fail receive obligation had been canceled) and there are 3 fail receive obligations of the same age, one of which is for 7 warrants, one of which is for 6 warrants, and one of which is for 5 warrants, EMCC will deliver 7 of the 10 warrants received to satisfy the fail receive obligation for 7 warrants and will not deliver the remaining 3 warrants until it has received a sufficient quantity of warrants which will allow it to fully satisfy at least one fail receive obligation.

EMCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it will facilitate the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

EMCC does not believe that the proposed rule change will have an impact on or impose a 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 relating to the proposed rule change have been solicited or received. EMCC will notify the Commission of any written comments received by EMCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to facilitate the prompt and accurate clearance and settlement of securities transactions for which it is responsible. The Commission believes that the rule change should provide EMCC with a process that should reduce the number of outstanding fail receive obligations and fail deliver obligations relating to warrants. The failure of one party to satisfy their settlement obligations threatens the entire clearance and settlement system because that party's failure may in turn cause other parties to fail to meet their obligations. Therefore, by reducing the number of outstanding fails at EMCC, the proposed rule change should facilitate the prompt and accurate clearance and settlement of securities transactions.

EMCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of notice because accelerated approval will enable EMCC to begin reducing the number of fail obligations relating to warrants immediately.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of EMCC. All submissions should refer to File No. SR–EMCC–98–5 and should be submitted by August 6, 1998.

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[4] that the proposed rule change (File No. SR–EMCC–98–5) be and hereby is approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–18964 Filed 7–15–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40185; File No. SR–NSCC–97–13]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving a Proposed Rule Change Relating to Changes in Membership Standards

July 9, 1998.

On October 30, 1997, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') and on December 31, 1998, amended a proposed rule change (File No. SR–NSCC–97–13) pursuant to Section 19(b)(1) of the Securities Exchange Act

[4] 15 U.S.C. 78s(b)(2).

[5] 17 CFR 200.30–3(a)(12).

of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on February 27, 1998.[2] One comment letter was received.[3] For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

Currently, NSCC's rules provide that it will establish, as deemed necessary or appropriate, standards of financial responsibility, operational capability, experience, and competence for membership, as well as guidelines for the application of membership standards. [4] The purpose of the rule change is to establish specific standards under which NSCC may deny an applicant membership or to cease to act for a participant.[5]

The revised rule will allow NSCC to deny membership to any applicant or to cease to act for any participant if a person who has either significant managerial responsibility or significant ability to influence the policies and actions of the applicant or participant (through ownership interest, contract, or otherwise), whether or not the person currently acts as a principal or registered representative, has a record that reflects any adverse history as enumerated in the rule. The types of adverse history enumerated in the rule include felony and misdemeanor proceedings and convictions; certain disciplinary, regulatory, or administrative proceedings and actions; arbitration or civil actions; multiple customer complaints; termination or permitted resignation after investigation or allegation of sales practice problems, violation of rules, regulation, laws, or standards of conduct; or being subject to heightened supervision.

Any action, complaint, or proceeding referred to in the rule that is not taken against a person will nonetheless be deemed to be taken against that person if his or her activities are cited in whole or in part as being a contributing cause. However, no person will be deemed to have an adverse regulatory history due to being named in customer complaints or adverse civil proceedings merely because of the persons's management or ownership position in the applicant or participant unless the number of complaints or proceedings are disproportionate to the size of the firm.

The rule change will also allow NSCC to deny membership to an applicant or to cease to act for a participant if a correspondent of the applicant or participant or any entity for which the applicant or participant is financially responsible would fail to meet the above membership standards. However this provision of the rule will apply only if the size of the business of the correspondent or other entity is significant relative to the capital of the applicant or participant. NSCC has informed the Commission that it intends to construe the new rule in a manner which will not limit its authority under its rules to deny membership to, to cease to act for, or to obtain further assurances from any applicant or participant when the circumstances warrant even if the circumstances include or consist solely of items that are not specific grounds for such action under the rule change.

II. Comment Letters

The Commission received one comment letter in response to the proposed rule change (*supra* note 3). The commenter supported the rule change but believed an applicant or participant should be able to appeal a decision to deny membership.

III. Discussion

Section 17A(b)(3)(F) of the Act [6] requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible. The Commission believes that the proposed rule change is consistent with NSCC's obligations under Section 17A(b)(3)(F) because it should enable NSCC to better manage its risk exposure by specifically authorizing NSCC to consider applicant's and participants' regulatory history. An adverse regulatory history can indicate that an applicant would or a participant does present an unacceptably high risk to NSCC and its participants.

Section 17A(b)(3)(H) of the Act [7] also requires that the rules of the clearing agency provide a fair procedure with respect to the denial of participation and the prohibition or limitation by the clearing agency of any person with respect to access to services offered by the clearing agency. The Commission believes that the proposed rule change is consistent with NSCC's obligations under Section 17A(b)(3)(H) because it defines the specific bases upon which NSCC may deny membership or cease to act for a participant.

In response to the issue of whether an applicant can appeal a denial of its membership application, the Commission notes that Rule 2 of NSCC's Rules and Procedures currently provides a hearing process for any applicant that is deemed to not meet membership requirements before the applicant is denied membership.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–97–13) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–18907 Filed 7–15–98; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 39693 (February 23, 1998), 63 FR 10058.

[3] Letter from William C. Alsover, President, Centennial Securities Company, to David F. Hoyt, NSCC (November 7, 1997).

[4] Rule 15 of NSCC's Rules and Procedures.

[5] NSCC has taken note of the findings set forth in the April 15, 1997, memorandum entitled, ''The Joint Regulatory Sales Practice Sweep; Heightened Supervisory Procedures,'' which was the product of an initiative involving the National Association of Securities Dealers, Inc., the New York Stock Exchange, Inc., the Securities and Exchange Commission, and the North American Securities Administrators Association, Inc.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78q–1(b)(3)(H).

[8] 17 CFR 200.30–3(a)(12)..

SMALL BUSINESS ADMINISTRATION

Small Business Investment Company of Connecticut (License #02–0052), Notice of License Surrender

Notice is hereby given that the Small Business Investment Company of Connecticut (SBIC/CT), Bridgeport, Connecticut, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (''the Act''). SBIC/CT was licensed by the Small Business Administration on January 31, 1961.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on June 29, 1998, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: July 7, 1998.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 98–18985 Filed 7–15–98; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending July 3, 1998

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings:

Docket Number: OST–98–3997.
Date Filed: June 26, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: July 24, 1998.
Description: Application of Passaredo Transportes Aereos S.A. pursuant to Section 402 of the Act and Subpart Q, applies for an air carrier permit authorizing the carriage of passengers on a charter basis between a point or points in Brazil and a point or points in the United States.

Docket Number: OST–98–4009.
Date Filed: June 29, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: July 27, 1998.
Description: Application of Tower Air, Inc. pursuant to 49 U.S.C. Section 41108 and Subpart Q, applies for the issuance of a new Certificate of Public Convenience and Necessity or Amendment of its existing Certificate for Route 401, to engage in foreign air transportation of persons, property and mail between any points in the United States, directly and via intermediate points, and any points in France, and beyond France to points in third countries, as limited by applicable bilateral agreements.

Docket Number: OST–98–4010.
Date Filed: June 29, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: July 27, 1998.
Description: Application of Federal Express Corporation pursuant to 49 U.S.C. Section 41102 and Subpart Q, applies for issuance of a new Certificate of Public Convenience and necessity authorizing Federal Express to provide scheduled foreign air transportation of property and mail between points in the United States, on the one hand, and points in the forty-eight (48) foreign countries listed, on the other hand.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 98–18951 Filed 7–15–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings, Agreements Filed During the Week Ending July 3, 1998

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–98–4015
Date Filed: July 1, 1998
Parties: Members of the International Air Transport Association
Subject:
PTC12 Telex Mail Vote 946–r1–4
USA-Austria/Belgium/Germany/Neth/Scand/Switz fares
r1–002m, r2–054vv, r3–044v, r4–064vv
Intended effective date: August 1, 1998

Docket Number: OST–98–4016
Date Filed: July 2, 1998
Parties: Members of the International Air Transport Association
Subject:
PTC2 ME 0045 dated June 26, 1998
Within Middle East Expedited Resos
r–1–002j, r–2–070ba, r–3–071ea, r–4–072c, r–5–079b, r–6–085dd, r–7–002o
Intended effective date: August 1/October 1, 1998

Docket Number: OST–98–4017
Date Filed: July 2, 1998
Parties: Members of the International Air Transport Association
Subject:
COMP Telex Mail Vote 948
Standard Condition Resolution for Special Fares
Intended effective date: August 1, 1998

Docket Number: OST–98–4020
Date Filed: July 2, 1998
Parties: Members of the International Air Transport Association
Subject:
PTC2 EUR–ME 0056 dated June 30, 1998
Europe-Middle East Expedited Resos 002a
Intended Effective Date: August 1, 1998.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 98–18952 Filed 7–15–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Railroad Rehabilitation and Improvement Financing

July 9, 1998.

ACTION: Notice.

SUMMARY: The Transportation Equity Act for the 21st Century (''TEA–21''), Pub. L. No. 105–178, 112 Stat. 107 (1998), established the Railroad Rehabilitation and Improvement Financing program (''RRIF''). To assist in its implementation, the Federal Railroad Administration (''FRA'') is requesting information on (1) types of projects which might benefit from financial assistance available under RRIF, and (2) potential applicants for such financial assistance.

ADDRESSES: Responses should be sent to James T. McQueen, Associate Administrator, Office of Railroad Development, Federal Railroad Administration, 400 7th Street, S.W., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: James T. McQueen or JoAnne M. McGowan, Chief, Freight Programs, (202) 632–3290.

SUPPLEMENTARY INFORMATION: TEA–21 amended Title V of the Railroad Revitalization and Regulatory Reform Act of 1976, as amended, 45 U.S.C. 821 et seq., by establishing RRIF, which will make financial assistance, in the form of *direct loans and loan guarantees,* available for eligible railroad projects. The aggregate unpaid principal balance of all financial assistance outstanding may not exceed $3.5 billion, of which not less than $1 billion shall be available solely for other than Class I railroads.

Applicants for assistance include State or local governments, government sponsored authorities and corporations, shippers, railroads, and joint ventures, but *each application must include at least one railroad.* Funds can be used to (1) acquire, improve or rehabilitate intermodal or rail equipment or facilities, including track, components of track, bridges, yards, buildings and

shops; (2) refinance outstanding debt incurred for the purposes described above; or (3) develop or establish new intermodal or railroad facilities. Priority will be given to projects that—

(1) enhance public safety;

(2) enhance the environment;

(3) promote economic development;

(4) enable U.S. companies to be more competitive in international markets;

(5) are endorsed by plans prepared under 23 U.S.C. 135, by the state or states in which they are located; or

(6) preserve or enhance rail intermodal service to small communities or rural areas.

Prerequisites to granting financial assistance under RRIF include:

(1) the repayment of the financial assistance is required to be made within a term of not more than 25 years from the date of its execution;

(2) the financial assistance is justified by the present and probable future demand for rail services or intermodal facilities;

(3) the applicant has given reasonable assurances that the facilities or equipment to be acquired, rehabilitated, improved, developed, or established with the proceeds of the financial assistance will be economically and efficiently utilized; and

(4) the obligation can reasonably be repaid, using an appropriate combination of credit risk premiums and collateral offered by the applicant to protect the Federal Government.

The Federal Credit Reform Act of 1990, 2 U.S.C. 661, requires that before making any loan or loan guarantee, agencies of the Federal Government must have received an appropriation of funds from Congress adequate to cover the cost to the Government of making that loan or loan guarantee (referred to in the TEA–21 as the credit risk premium (''Premium'')). However, this requirement is modified by TEA–21 which provides that *the source of the Premium may be either appropriated Federal funds, funds from a non-Federal source, or any combination thereof.* Congress has not appropriated funds to provide the Premium for borrowers, and in the absence of such an appropriation, the Premium associated with any direct loan or loan guarantee must be provided by the project applicant or infrastructure partner, which includes any participant in the project. The Premium must be paid before disbursement of any loan proceeds.

FRA anticipates many different applicants and for many types of projects. These could include *cooperative ventures for railroad acquisition, rehabilitation, or improvement involving railroads, states, local governments and/or shippers.* Of particular interest to the FRA are the implementation of Positive Train Control systems and the improvement of highway-rail crossing protection. Further, RRIF is not limited to rail freight projects, and passenger service of all types are eligible.

FRA is seeking comments on a project or projects that a potential applicant may submit under the RRIF. Comments should include a brief description of the project, preliminary cost estimates, and type and term of financial assistance that might be sought. The information will not constitute an application, but it will greatly enhance FRA's understanding of the potential scope of applications and accordingly assist in the appropriate implementation of RRIF. Please submit comments by August 14, to provide an opportunity for adequate consideration.

Issued in Washington, D.C. on July 9, 1998.

Jolene M. Molitoris,

Federal Railroad Administrator.

[FR Doc. 98–18941 Filed 7–15–98; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Commission to Study Capital Budgeting

AGENCY: Commission to Study Capital Budgeting, DOT.

ACTION: Notice of meetings.

SUMMARY: The agenda for the next meetings of the Commission to Study Capital Budgeting includes discussions on capital budgeting issues and the draft outline for the final report on Friday, July 24. On Saturday morning, July 25, the Commission will continue its discussions of different aspects of capital budgeting and discuss the next steps to be taken in preparation of its report. The Commission's final report on capital budgeting is due on December 13, 1998. Meetings are open to the public. Limited seating capacity is available.

Dates, Times and Places of the Next Commission Meetings

July 24, 9:00 a.m. to 5:00 p.m., White House Conference Center, Lincoln Room (9:00 a.m. to Noon); Truman Room (Noon to 5:00 p.m.), 726 Jackson Place, NW, Washington, DC 20503

July 25, 1998, 9:00 a.m. to 12:00 noon, White House Conference Center, Truman Room, 726 Jackson Place, NW, Washington, DC 20503

The Commission is seeking all views on capital budgeting. Interested parties may submit their views to: Dick Emery, Executive Director, President's Commission to Study Capital Budgeting, Old Executive Office Building (Room 258), Washington, DC 20503, Voice: (202) 395–4630, Fax: (202) 395–6170, E-Mail: capital__budget@omb.eop.gov, Website: http://www.whitehouse.gov/WH/EOP/OMB/PCSCB/

FOR FURTHER INFORMATION CONTACT: E. William Dinkelacker, Ph.D., Designated Federal Official, Room 4456 Main Treasury, Washington, DC 20220, Voice: (202) 622–1285, Fax: (202) 622–1294, E-Mail: william.dinkelacker@treas.sprint.com

Angel E. Ray,

Committee Management Officer.

[FR Doc. 98–18927 Filed 7–15–98; 8:45 am]

BILLING CODE 4810–25–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations: ''Monet in the 20th Century''

AGENCY: United States Information Agency.

ACTION: I hereby determine that the objects to be included in the exhibit ''Monet in the 20th Century,'' (see list), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with a foreign lender. I also determine that the exhibit or display of the listed exhibit objects at the Museum of Fine Arts, Boston, Massachusetts, beginning on or about September 20, 1998 through December 27, 1998 is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985.22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 June 27, 1985 (50 27393, July 2, 1985).

FOR FURTHER INFORMATION CONTACT: Paul Manning, Assistant General Counsel at 202/619–5997. The address is U.S. Information Agency, 301 4th Street, S.W., Washington, DC 20547–0001.

Dated: July 13, 1998.

Les Jin,

General Counsel.

[FR Doc. 98–18973 Filed 7–15–98; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations

ACTION: Thereby determine that the objects on the list specified below, to be included in the exhibit, ''Van Gogh's Van Goghs: Masterpieces from the Van Gogh Museum, Amsterdam,'' imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at the National Gallery of Art, in Washington, D.C., from on or about October 12, 1998, to on or about January 3, 1999, and at the Los Angeles County Museum of Art, Los Angeles, California, from on or about January 17, 1999, to on or about April 4, 1999, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register.**

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985).

FOR FURTHER INFORMATION CONTACT: Jacqueline Caldwell, Assistant General Counsel, Office of the General Counsel, 202/619–6982, and the address is Room 700, U.S. Information Agency, 301 4Th Street, SW, Washington, D.C. 20547–0001.

Dated: July 10, 1998.

Les Jin,

General Counsel.

[FR Doc. 98–18929 Filed 7–15–98; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations

AGENCY: United States Information Agency.

ACTION: Notice; request for public comments.

SUMMARY: The United States Information Agency has combined into one form the Form IA–1119 (10/85)—Guidelines for the Administration of Assistance Awards Awarded by the United States Information Agency and the former Form IA–1120 (10/85)—United States Information Agency, Office of Contracts, General Conditions, Assistance Awards. The combined form has been retitled IA–1119 (04/98)—Terms and Conditions for the Administration of United States Information Agency Assistance Awards.

DATES: Written comments must be sent by August 17, 1998.

Authority: This notice is issued under the authority of 22 U.S.C. 2658 and E.O. 12048.

ADDRESSES: Send comments to USIA, Office of Contracts, Grants Division, 301 4th Street SW., Room M22, Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Joyce C. Love on 202–205–8590 or Carolyn Payne-Fuller on 202–260–3145.

Dated: July 8, 1998.

James W. Durham,

Acting Director, Office of Contracts.

Terms and Conditions for the Administration of United States Information Agency Assistance Awards

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I. Introduction

This document defines award terms and conditions and procedures for institutions and organizations to use in receiving, disbursing and accounting for funds awarded by the United States Information Agency. Any questions concerning these procedures should be addressed to: U.S. Information Agency, Office of Contracts, Grants Division, M/KG, Washington, DC 20547, Phone: (202) 205–5477.

II. Assistance Awards (Grant Agreement, Cooperative Agreement or Letter Agreement)

An agreement is formalized by a document signed by the Grants Officer, U.S. Government, duly appointed by the Agency, and accepted by the recipient institution or organization. The agreement will contain the terms and conditions appropriate to the purpose of the project, and the recipient is required to follow the provisions of the agreement in carrying out the program. These Terms and Conditions apply, unless specifically modified or deleted in the text of the award document, to all grants, cooperative agreements or letter agreements awarded by the United States Information Agency. As used in these Terms and Conditions, all references to the Grants Officer refer to the officer, his or her successor or designee, executing the award document for the Agency.

III. Amendments

The agreement is subject to amendment for such purposes as are necessary to enable the grantee to assist the Agency in the conduct of its programs. However, requests for amendments will not be considered unless the Recipient is in compliance with all reporting requirements stipulated in the Agreement.

IV. Audits

Revised Circular A–133, which implements the Single Audit Act Amendments of 1996, provides uniform single audit requirements for all non-federal grantees—state and local governments (including Indian tribal governments), colleges and universities, hospitals and other non-profit organizations (however non-U.S. based entities are exempt). It applies to audits of fiscal years beginning after June 30, 1996.

V. Compliance With Federal and State Laws

In the performance of the work authorized pursuant to this award, the recipient agrees to comply with all applicable Federal and State laws, rules and regulations which deal with or relate to the employment by the recipient of the employees necessary for such performance.

VI. Convict Labor

In connection with the performance of work under this award, the recipient agrees not to employ any person undergoing sentence of imprisonment except as provided by Pub. L. 89–176, September 10, 1965 (18 U.S.C. 4082 (c)(2)) and Executive Order 11755, December 29, 1973.

VIII. Disputes

A. Except as otherwise provided in this award, any dispute concerning a question of fact arising under this award that is not disposed of by agreement shall be decided by the Grants Officer, who shall reduce his/her decision to

writing and mail or otherwise furnish a copy to the recipient. The decision of the Grants Officer shall be final and conclusive unless, within thirty (30 days from the date of receipt of such copy, the recipient mails or otherwise furnishes to the Grants Officer a written appeal addressed to the Director of the United States Information Agency. The decision of the Director's authorized representative for the determination of such appeal shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the recipient shall be allowed an opportunity to be heard and to offer evidence in support of this appeal. Pending final decision of a dispute, the recipient shall proceed diligently with the performance of the award and in accordance with the Grants Officer's decision.

B. Any failure by the parties to agree on the allowability or allocability of costs under this award shall be considered a dispute concerning a question of fact for decision by the Grants Officer within the meaning of this clause.

C. This Disputes clause does not preclude consideration of legal questions in connection with decisions provided in paragraph (A) above: *Provided*, that nothing in this award shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

VIII. Examination of Records (OMB Circular A–110)

The United States Information Agency, the Inspector General, the Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of the recipient that are pertinent to the award, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

IX. Payment of Interest on Recipient's Claim

A. If an appeal is filed by the recipient from a final decision of the Grants Officer under the disputes clause of this award, denying a claim arising under the award, simple interest on the amount of the claim finally determined owed by the Government shall be payable to the recipient. Such interest shall be at the rate determined by the Secretary of the Treasury pursuant to Pub. L. 92–41, 85 Stat. 97, from the date the recipient furnishes to the Grants Officer a written appeal under the Disputes clause of this award, to the date of (1) a final judgement by a court of competent jurisdiction, or (2) mailing to the recipient of a supplemental agreement for execution either confirming complete negotiations between the parties or carrying out a decision of a board of contract appeals.

B. Notwithstanding (A) above, (1) interest shall be applied only from the date payment was due, if such date is later than the filing of appeal, and (2) interest shall not be paid for any period of time that the Grants Officer determined the recipient has unduly delayed in pursuing remedies before a board of contract appeals or a court of competent jurisdiction.

X. Refunds

A. If any of the funds made available to the recipient are unexpended upon the expiration or termination of the award, as of the due date of the final financial report, a check made payable to the United States Information Agency for the unexpended balance shall accompany the final financial report(s).

B. Subsequent Refunds

The recipient shall refund to the Agency all refunds, rebates, or credits, received after submission of the final financial report. The recipient may, however, deduct from any such refunds, rebates, or credits all *bona fide* costs incurred by the recipient prior to the expiration date of the agreement but not billed to the recipient until after submission of the financial report. When subsequent transactions of this nature occur, a notice shall be sent to the Agency describing each item and amount involved and indicating that this subsequent notice amends the report previously submitted. A copy of such notice, together with the net amount of the refund, shall be forwarded to the Agency.

XI. Reports

A. *Program*—The agreement will state the due date and the type of report required for the recipient to fulfill its program obligations. The program report shall include the agreement number, period covered and whether it is an ''interim'' or ''final'' report.

B. *Financial*—The agreement will state the due date of the report. SF–269, ''Financial Status Report'' (sample attached), should be used to report all expenditures of funds. The report shall include the agreement number, the period covered, and whether it is an ''interim'' or ''final'' report. The final financial report shall be certified by the recipient's chief fiscal officer, or officer with comparable function and authority, as follows:

> ''I hereby certify to the best of my knowledge and belief that this report is correct and complete and that all outlays and unliquidated obligations are for the purposes set forth in the award documents.''

C. If, for reasons beyond its control, the recipient institution or organization cannot submit the program and financial reports when due, it should request permission from the Grants Officer to submit them at a later date.

XII. Subcontractors and Outside Associates and Consultants

None of the substantive programmatic work under a grant or other agreement may be subcontracted or transferred without prior approval of the USIA Grants Officer. This provision does not apply to the purchase of supplies, material, equipment, or general support services.

XIII. Termination

A. Termination for Cause

The Federal sponsoring agency may reserve the right to terminate any grant or other agreement in whole or in part at any time before the date of completion, whenever it is determined that the recipient has failed to comply with the conditions of the agreement. The Federal sponsoring agency shall promptly notify the recipient in writing of the determination and reasons for the termination, together with the effective date. Payments made to recipient or recoveries by the Federal sponsoring agency under grants or other agreements terminated for cause shall be in accordance with the legal rights and liabilities of the parties.

B. Termination for Convenience

1. The Federal sponsoring agency or recipient may terminate grants and other agreements in whole or in part when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The

recipient shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible.

2. The Federal sponsoring agency shall allow full credit to the recipient for the Federal share of the noncancellable obligations, properly incurred by the recipient prior to termination.

XIV. Travel

A. Definitions

The terms used in this clause have the following meanings:

1. ''International air transportation'' means transportation of persons (and their personal effects) or property by air between a place in the United States and a place outside thereof or between two places both of which are outside the United States.

2. ''U.S. Flag Air Carrier'' means one of a class of air carriers holding a certificate of public convenience and necessity issued by the Civil Aeronautics Board, approved by the President, authorizing operations between the United States and/or its territories and one or more foreign countries.

3. The term ''United States'' includes the fifty states, Commonwealth of Puerto Rico, possessions of the United States, and the District of Columbia.

B. Preference for U.S. Flag Air Carriers

1. Pub. L. 93–623 requires that all Federal agencies and Government contractors, subcontractors and award recipients use U.S. Flag Air Carriers for international air transportation of personnel (and their personal effects) or property, to the extent services by such carriers is available. It further provides that the Comptroller General of the United States shall disallow any expenditure from appropriated funds for international air transportation on other than a U.S. Flag Air Carrier in the absence of satisfactory proof of the necessity.

2. In the event that the recipient selects a carrier other than a U.S. Flag Air Carrier for international air transportation, a certification must be included on vouchers involving such transportation essentially as follows:

Certification of Unavailability of U.S. Flag Air Carriers

I hereby certify that transportation service for personnel (and their personal effects) or property by a certified U.S. Flag Air Carrier was unavailable for the following reason(s): (state reason(s))

3. The recipient shall include the substance of this clause, including this paragraph (3), in each subcontract, subgrant or purchase hereunder which may involve international air transportation.

4. *U.S. Flag Air Carriers*—All transportation of persons or property to be paid with funds provided by the agreement must be performed on a U.S. Flag Air Carrier when such service is ''available.'' In all but the most unusual circumstances, all travel that originates, terminates or involves stopovers in the United States must be on U.S. Flag Air Carriers.

5. a. Examples of the ''unavailability'' of passenger service by a U.S. Flag Air Carrier:

(1) When the gateway airport abroad is the traveler's origin or destination airport, and the use of a U.S. Flag Air Carrier would extend the time in travel status, including delay at origin and early arrival at destination, by at least 24 hours; or

(2) When the gateway airport abroad is an interchange point and the use of a U.S. Flag Air Carrier would require the traveler to wait six hours or more to make connections at that point; or

(3) When connecting with ongoing flights at the gateway airport in the United States would extend the traveler's time in travel status by at least six hours.

b. U.S. Flag Air Carrier service will be used to the furthest interchange point with foreign carriers and foreign carrier service will be used to the nearest interchange point with U.S. Flag Air Carriers which will not extend the traveler's time in travel status by more than six hours between points of origin and destination.

C. Economy Class Accommodations

In conformity with general U.S. Government policy, it is the policy of the Agency that persons traveling under Agency programs use economy class accommodations. There are exceptional circumstances, however, when the use of other than economy class accommodations may be necessary. The recipient may apply the following limited guidance in determining whether other than economy class accommodations may be permitted.

D. Mode of Travel

1. Train Travel

(a) Sleeping Car Accommodations. When overnight travel is involved, the least expensive first class sleeping accommodations available shall be allowed. Higher cost accommodations may be authorized or approved upon certification by the traveler on the travel voucher that the lowest cost accommodations were not available or that the higher cost accommodations were authorized or approved by the Agency for reasons of security.

(b) Parlor Car and Reserved Coach Accommodations. For train travel exceeding four hours, reserved coach accommodations will be used to the greatest extent possible. A parlor car seat may be allowed when reserved coach accommodations are not available.

(c) Extra-Fare Trains. Travel by extra-fare trains may be authorized when administratively determined to be advantageous to the Government or required for security reasons. The use of the Metroliner coach service is considered to be advantageous to the Government.

2. Air Travel

A. Policy

It is the policy of the Government that employees or individuals on official business using commercial air carriers for domestic or international flights travel in economy class accommodations. The limited exceptions to this policy are listed below.

B. Exceptions to Economy Class Travel May Occur When

(1) Regularly scheduled flights between the authorized origin and destination points (including connection points) provide only business class service. The traveler must provide certification to that effect on the travel voucher.

(2) Space is not available in economy class accommodations on any scheduled flights in time to accomplish the purpose of the travel, which is so urgent that it cannot be postponed.

(3) Business class accommodations are necessary due to the disabling condition of the traveler that other accommodations cannot be used. Such condition must be substantiated by medical authority.

(4) Business-class accommodations are required for security purposes or because exceptional circumstances make their use essential to the successful performance of an Agency mission.

(5) Economy class accommodations on foreign carriers do not provide adequate sanitation or meet minimum health standards.

C. Authority for Business Class Travel

The authority to authorize or approve business class air travel for exceptions (1) through (5) above is lodged with the Associate Director for the Bureau of

Educational and Cultural Affairs and cannot be redelegated. The authorization for business class travel shall be made in advance of actual travel unless circumstances make advanced authorization impossible. In these cases, the Program Officer will obtain written approval from the Associate Director as soon as possible.

3. *Travel Arrangements and Payment.* If the funds are withheld by the Agency, with payment made by the Agency or its designated representative (Embassy), the recipient institution/organization or its designated representative will make all arrangements for the travel authorized in the agreement. Such arrangements include planning the itinerary and obtaining the tickets.

[FR Doc. 98–18697 Filed 7–15–98; 8:45 am]

BILLING CODE 8230–01–M

Corrections

Federal Register
Vol. 63, No. 136
Thursday, July 16, 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 ENERGY

Federal Energy Regulatory Commission

[Docket No. ER94-1247-019]

NorAm Energy Services, Inc.; Notice of Filing

Correction

In notice document 98–18366 appearing on page 37369 in the issue of Friday, July 10, 1998, the docket number in the heading should be corrected as above.

BILLING CODE 1505-01-D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4361-N-02]

Super Notice of Funding Availability for National Competition Programs (National SuperNOFA); Reopening of Application Period for FHIP and Housing Counseling; and Technical Correction

Correction

In notice document 98–18125 appearing on page 37024, in the issue of Wednesday, July 8, 1998, the agency line on the separate part cover should read as above.

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

[Texas License L03835]

ProTechnics International, Inc.--Houston, TX: Field Flood Tracer Study; Finding of No Significant Impact and Notice of Opportunity for a Hearing

Correction

In notice document 98–16537 beginning on page 33966 in the issue of Monday, June 22, 1998, make the following correction:

On page 33967, in the second column, under *Conclusion*, in the the last line ''significant'' should read ''insignificant''.

BILLING CODE 1505-01-D

federal register

Thursday
July 16, 1998

Part II

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 171, 177, 178, and 180

Hazardous Materials: Safety Standards for Preventing and Mitigating Unintentional Releases During the Unloading of Cargo Tank Motor Vehicles in Liquefied Compressed Gas Service; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 177, 178, 180

[Docket No. RSPA–97–2718 (HM–225A)]

RIN 2137–AD07

Hazardous Materials: Safety Standards for Preventing and Mitigating Unintentional Releases During the Unloading of Cargo Tank Motor Vehicles in Liquefied Compressed Gas Service

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of establishment of advisory committee for negotiated rulemaking and notice of first meeting.

SUMMARY: RSPA announces the establishment of an advisory committee to develop recommendations for alternative safety standards for preventing and mitigating unintentional releases of hazardous materials during the unloading of cargo tank motor vehicles in liquefied compressed gas service. The Committee will develop and adopt its recommendations through negotiation. The Committee is composed of persons who represent the interests affected by the proposed rule, such as businesses that transport and deliver propane, anhydrous ammonia, and other liquefied compressed gases; manufacturers of DOT specification MC 330 and MC 331 cargo tank motor vehicles used to transport liquefied compressed gases; state and local public safety and emergency response agencies; and the federal Department of Transportation. This notice also announces the time and place of the first advisory committee meeting. The public is invited to attend; an opportunity for members of the public to make oral presentations will be provided if time permits.

DATES: The first meeting of the advisory committee will be from 9:30 a.m. to 4:00 p.m. on Tuesday, July 28, 1998 and will continue from 9:30 a.m. to 4:00 p.m. on Wednesday, July 29, 1998.

ADDRESSES: The first meeting of the advisory committee will take place at the Department of Transportation, Room 2230, 400 Seventh Street, S.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Jennifer Karim, 202–366–8553, Office of Hazardous Materials Standards, Research and Special Programs Administration, Department of Transportation; or Nancy Machado, 202–366–4400, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation. *Facilitator:* Philip J. Harter, The Mediation Consortium, 202–887–1033.

SUPPLEMENTARY INFORMATION:

I. Background

On June 4, 1998, RSPA published a notice of intent to establish an advisory committee (Committee) for a negotiated rulemaking to develop recommendations for alternative safety standards for preventing and mitigating unintentional releases of hazardous materials during the unloading of cargo tank motor vehicles (CTMVs) in liquefied compressed gas service. The notice requested comment on membership, the interests affected by the rulemaking, the issues the Committee should address, and the procedures it should follow. The reader is referred to the June 4 notice (63 FR 30572) for further information on these issues.

RSPA received 19 written comments on the notice of intent. In addition, 43 people participated in a public meeting in Washington, D.C., on June 23–24, 1998. All endorsed the negotiated rulemaking process. Based on this response, and for the reasons stated in the notice of intent, RSPA has determined that establishing an advisory committee on this subject is appropriate and in the public interest. In accordance with the Federal Advisory Committee Act (FACA; 5 U.S.C. App. I sec. 9(c)), RSPA prepared a Charter for the Establishment of a Negotiated Rulemaking Advisory Committee. RSPA intends to file the charter within fifteen (15) days from the date of this publication.

II. Membership

A total of 29 individuals were nominated or applied for membership to the Negotiated Rulemaking Committee either through written comments or at the June 23–24 public meeting.

In considering requests for representation on the Committee, the task before RSPA was to decide whether the requesters represent interests significantly affected by the proposed rulemaking. As identified in the notice of intent, in addition to the Department of Transportation (DOT), these interests are: the National Propane Gas Association (NPGA); The Fertilizer Institute (TFI); National Tank Truck Carriers, Inc. (NTTC); the National Fire Protection Association (NFPA); small businesses that transport and deliver propane, anhydrous ammonia, and other liquefied compressed gases; large businesses that transport and deliver propane, anhydrous ammonia, and other liquefied compressed gases; manufacturers of DOT MC 330 and MC 331 specification CTMVs used to transport liquefied compressed gases; state safety regulatory agencies; state safety enforcement agencies; and state/local emergency response and fire services agencies.

In response to comments, RSPA has modified the list of interests to add the Compressed Gas Association to represent the interest of companies that produce and use liquefied compressed gases other than propane and anhydrous ammonia, such as oxygen and nitrogen. In addition, to accommodate the separate interests of large and small companies that may be affected by the rulemaking and the separate interests of companies that transport propane versus anhydrous ammonia, RSPA has identified as distinct interests small propane distribution companies, large propane distribution companies, small anhydrous ammonia distribution companies, and large anhydrous ammonia distribution companies. Finally, RSPA believes that the interests of companies that manufacture so-called ''bobtail'' CTMVs (most commonly defined as truck-mounted tanks having a capacity under 3,500 gallons) differ sufficiently from the interests of companies that manufacture ''transport'' CTMVs (most commonly defined as semi-trailers or full trailers having a capacity greater than 3,500 gallons) as to justify separate representation on the Committee.

In the notice of intent, RSPA requested comments on how best to include manufacturers of cargo tank components, such as internal self-closing stop valves, pumps, meters, and other components of emergency discharge control systems and remote shut-off systems. RSPA believes that component manufacturers have technical expertise that would be valuable to the Committee's deliberations. As noted in the notice of intent, the convener's report examined several options for integrating component manufacturers into the negotiated rulemaking process. The convener recommended that they participate as members of work groups that the Committee may establish to gather information and develop proposals for specific issues related to the rulemaking, but not as members of the Committee itself.

Many commenters support the recommendation of the convener's report and oppose inclusion of component manufacturers on the Committee because these manufacturers may have a vested interest in

developing a solution that includes their equipment. However, other commenters believe that component manufacturers should be members of the Committee because they will be significantly affected by any rulemaking that results from the Committee's deliberations. RSPA agrees with these commenters and believes that technology interests, such as manufacturers of internal self-closing stop valves, hoses, remote shut-off systems, and leak detection sensors and monitors, should be included on the Committee. Thus, RSPA has modified the list of interests that will be represented to include a technology interest.

Following is the list of Committee members, identified by interest. Members are encouraged to designate alternates who can serve in place of the member if necessary. As noted in the notice of intent, the Committee will make its decisions through a process of negotiation leading to consensus. ''Consensus'' means the unanimous concurrence among the interests represented on the Committee, unless the Committee explicitly adopts a different definition. Where two representatives are identified, RSPA expects that they will act together to represent the interest's views and perspectives in the negotiations.

For the interest identified as ''Cargo Tank Manufacturers—Bobtail,'' RSPA has requested that the three individuals identified below consult with each other to determine how their interest will be represented on the Committee. Similarly, for the interest identified as ''Technology,'' RSPA has asked the three identified individuals to consult with each other to determine how the technology interest will be represented on the Committee.

1. *Department of Transportation*
   Edward Mazzullo, Research and Special Programs Administration
2. *National Propane Gas Association*
   Charles Revere, Revere Gas and Appliance
3. *The Fertilizer Institute*
   Charles Rosas, Farmland Industries
4. *National Tank Truck Carriers*
   Clifford Harvison
5. *Compressed Gas Association*
   Ronald McGrath
6. *National Fire Protection Association*
   Theodore Lemhoff
7. *Propane Distribution—Small*
   Mike Gorham, Northwest Gas, and Lin Johnson, Lin's Propane
8. *Propane Distribution—Large*
   Russell Rupp, Suburban Propane, and Ken Faulhaber, Ferrellgas
9. *Anhydrous Ammonia/Dual Use Anhydrous Ammonia-Propane—Small*
   Charles Whittington, Grammer Industries
10. *Anhydrous Ammonia/Dual Use Anhydrous Ammonia-Propane—Large*
    Jean Trobec, Growmark, and Jim York, National Private Truck Council
11. *State Safety Enforcement Agencies*
    Steve Herman, Cooperative Hazardous Materials Enforcement Development (COHMED), and Eric Adair, Commercial Vehicle Safety Alliance (CVSA)
12. *State Safety Regulatory Agencies*
    Vicki O'Neill, Bureau of Liquefied Petroleum Gas Inspections/Florida Department of Agriculture and Consumer Services, and Ronald Coleman, California State Fire Marshal
13. *State/Local Emergency Response Agencies and Fire Services*
    Ronald Dykes, International Association of Fire Chiefs
14. *Cargo Tank Manufacturers—Transports*
    Mike Pitts, Mississippi Tank
15. *Cargo Tank Manufacturers—Bobtails* (one of the following)
    David Auxier, Bulk Tank and Transport, or Jerry Kowalski, Arrow Tank and Engineering, or David Fulbright, White River Distributors
16. *Technology* (one of the following)
    Jim Griffin, Fisher Controls, or David Stainbrook, REGO Valve, or Bob Lyons, Thermolite, or Todd Coady, Rocket Supply

In addition to those listed above, the following people asked to be members or were nominated for membership on the Committee: Gary Nelson, Nevada Propane Board (Nelson); Douglas Buchan (Buchan); Paul Horgan, California Highway Patrol (Horgan); and Terry Pollard, Nebraska Highway Patrol (Pollard).

Buchan asked to participate based on his expertise and experience with the issues that are the subject of the regulatory negotiation; however, because he does not represent an interest that will be affected by the rulemaking, he was not selected. Horgan and Pollard were nominated by a commenter; RSPA agrees that they are well qualified to represent the interests of state safety enforcement agencies on the Committee. However, the number of state representatives on the Committee is necessarily limited. Both Horgan and Pollard have been invited to participate as alternate members and on working groups that the Committee may establish to make recommendations on technical issues. Nelson was nominated by a commenter to represent the interest of state regulatory agencies. RSPA agrees that state regulatory agencies should be represented on the Committee. However, RSPA believes that the Committee should also reflect geographic diversity. Since many of the members selected are from the western United States, RSPA decided to select a representative of a state regulatory agency—Bureau of Liquefied Petroleum Gas Inspections/Florida Department of Agriculture and Consumer Services—from an eastern state.

Persons not selected as members of the Committee will have ample opportunities to participate in the negotiated rulemaking process. For example, RSPA expects that the Committee will establish one or more technical working groups to offer advice and recommendations on specific issues. Further, there will be opportunities for non-members to speak or provide written comments at meetings of the Committee. RSPA encourages all those who are interested in this rulemaking to take advantage of these opportunities to assure that the Committee considers their views.

One commenter recommended that committee membership be determined on a proportional basis, so that those interests having what they believe to be the most at stake in the rulemaking would be allotted the most representatives on the committee. RSPA does not agree and believes that this comment stems from a fundamental misunderstanding of the negotiated rulemaking process. A negotiated rulemaking is intended to be an inclusive process that affords all the interests that will be significantly affected by a rulemaking an opportunity to contribute to development of a consensus regulation. Each member of a negotiated rulemaking committee speaks for the interest he represents and has an equal voice in the process of negotiating towards consensus. The key to success for a negotiated rulemaking is to assure that all the interests that may be affected are represented.

This commenter also suggested that representatives of the propane industry could also adequately represent companies that transport both propane and other liquefied compressed gases. RSPA does not agree. Transportation of anhydrous ammonia in MC 330 and MC 331 CTMVs presents safety and operational issues that differ from those involved with the transportation of propane. For this reason, RSPA believes that companies that transport anhydrous ammonia have an interest in the negotiated rulemaking that is distinct and separate from the interest of propane transporters and should, therefore, have separate representation.

Similarly, RSPA believes that companies that transport liquefied compressed gases other than propane and anhydrous ammonia are a distinct and separate interest and should have separate representation on the Committee.

Several commenters recommended that a university transportation institute be included as a member of the Committee and specifically suggested the Pennsylvania Transportation Institute (PTI). These commenters believe that a transportation institute could be a valuable source of unbiased technical information and assistance. RSPA agrees. However, a transportation institute does not represent an interest that would be significantly affected by the rulemaking. It would, therefore, not be appropriate for a transportation institute to participate as a member of the Committee. RSPA expects that the Committee will gather information from a variety of sources and will encourage the Committee to consult with any organizations that can provide relevant data and technical information.

III. Participation by Non-Members

Meetings of the advisory committee will be open to the public so that individuals who are not part of the Committee may attend and observe. Any person attending the Committee meetings may address the Committee if time permits or file statements with the Committee.

IV. Key Issues for Negotiation

In its notice of intent, RSPA tentatively identified major issues that should be considered in this negotiated rulemaking and asked for comment concerning the appropriateness of these issues for consideration and whether other issues should be added. These issues were:

A. Prevention of Unintentional Releases

The Committee should examine possible preventive measures to reduce or eliminate the incidence of unintentional releases during unloading. For example, some commenters to the Advanced Notice of Proposed Rulemaking (ANPRM) issued under Docket No. RSPA–97–2718 (HM–225A) [62 FR 44059] on August 18, 1997, have suggested that RSPA adopt a rigorous hose management system that assures that delivery hoses and lines meet high standards for quality, strength, and durability, and that requires periodic examination and testing to assure continued suitability for use in the transfer of high risk hazardous materials. Advocates of such a system say that it could significantly reduce the number of unloading incidents related to failures in hoses or hose assemblies. Similarly, the Committee should consider whether there are preventive measures, such as daily inspections or periodic testing, that should be implemented for other parts of the cargo tank delivery system, including pumps, valves, and piping.

B. Detection of Unintentional Releases

Preventive measures alone cannot assure the safety of cargo tank unloading operations. Despite the best efforts of the industry and the government, incidents will occur, and unintentional releases of high risk hazardous materials such as propane or anhydrous ammonia will occur. The Committee thus should consider methods to assure that unintentional releases can be detected and controlled. One such detection method is provided by the current regulatory requirement for continual visual observation of the cargo tank throughout the unloading process. Alternatives that have been suggested include remote monitoring and signaling systems, such as sensors, alarms, and electronic surveillance equipment, or ''patrolling'' whereby the person attending the unloading operation moves between the storage tank and the cargo tank to assure that each is monitored periodically throughout the unloading process.

C. Mitigation of Unintentional Releases

Once a leak has been detected, methods to prevent catastrophic consequences are critical. A passive system for shutting down unloading when a leak has been detected operates automatically, that is, without human intervention. Examples include excess flow valves, which are intended to close the internal self-closing stop valve if the flow rate exceeds a threshold level, and thermal links, which are intended to close the internal self-closing stop valve if the temperature reaches a threshold level. A remote system provides a means to shut down cargo tank unloading operations using a mechanical device that is located on the CTMV but away from the valve(s) that it operates. Many CTMVs have remote mechanical shut-offs located near the vehicle cab. The remote shut-off may be manually activated. An off-truck electro-mechanical remote system includes a portable device that can shut down cargo tank unloading operations away from the CTMV. In many instances, an off-truck electro-mechanical remote is manually activated, although some systems default to the fail-safe mode under certain circumstances. The Committee should evaluate alternatives with a view towards determining which methods or combination of methods provide the most cost-effective means for controlling unintentional releases during cargo tank unloading operations.

V. Comments on Issues List

In response to the notice of intent, one person submitted comments on the issues involved in the regulatory negotiation. The commenter suggested that, in addition to the issues outlined in the notice of intent, the Committee should consider: (1) Defining an acceptable hose life and specific inspection pressures for hoses; (2) alternatives to the current attendance requirements; (3) specific requirements for off-truck remote systems; and (4) limiting the types of fittings and valves used directly on cargo tank walls to malleable steel or ductile iron construction for vessels in propane service. RSPA agrees that the first three issues should be considered by the Committee and notes that hose management, monitoring of unloading operations, and off-truck remotes are all included in the issues list in the notice of intent. However, RSPA does not agree that the issue of the material used for fittings or valves located directly on cargo tank walls should be included in the issues that will be considered by the Committee. This rulemaking is concerned only with operational issues related to unloading of MC 330 and MC 331 CTMVs and with the components of a CTMV's emergency discharge system. General issues related to cargo tank design and construction are more properly the subject of a separate rulemaking. This recommendation will be considered as part of RSPA's docket HM–213.

VI. Procedure and Schedule

Staff support for the advisory committee will be provided by RSPA and the facilitator, and meetings will take place in Washington, D.C., unless agreed otherwise by the Committee.

Consistent with FACA requirements, the facilitator will prepare summaries of each Committee meeting. These summaries and all documents submitted to the Committee will be placed in the public docket for this rulemaking.

As stated in the Notice of Intent, the Committee's objective is to prepare a report containing an outline of its recommendations for a notice of proposed rulemaking with suggestions for specific preamble and regulatory language based on the Committee's recommendations, as well as information relevant to a regulatory evaluation and an evaluation of the impacts of the proposal on small

businesses. One commenter recommended that the Committee's final product be a Notice of Proposed Rulemaking (NPRM), with the Committee reaching consensus on the language of the NPRM and preamble. RSPA believes that this is a decision that the Committee should make as it develops ground rules and timetables for its deliberations.

The negotiation process will proceed according to a schedule of specific dates that the Committee devises at its first meeting on July 28–29, 1998. RSPA will publish notices of future meetings in the **Federal Register**. RSPA anticipates that the Committee will meet for up to five two-day sessions beginning in July 1998. If the Committee establishes working groups to support its work, additional meetings for the working groups may be necessary. RSPA expects the Committee to reach consensus and prepare a report recommending a proposed rule within six months of the first meeting. RSPA expects to publish an NPRM based on the Committee's recommendations by February 15, 1999, and a final rule by May 1, 1999. If unforeseen delays in the anticipated schedule occur, the Research and Special Programs Administrator may agree to an extension of time if the consensus of the Committee is that additional time will result in agreement.

VII. Meeting Agenda

The first meeting of the negotiated rulemaking committee will begin at 9:30 a.m. on July 28 with consideration of Committee ground rules, procedures, and calendar. The Committee will then address the specific issues that should be included in the negotiation and how data to support its deliberations will be developed. In addition, the Committee will consider whether to establish working groups to provide technical support and recommendations for specific aspects of the negotiations. The first meeting will conclude at 4:00 p.m. on July 29.

Title 41 CFR Sec. 105–54.301 requires that notices of advisory committee meetings must be published at least 15 calendar days prior to a meeting. However, that section also permits less than 15 days notice of a meeting in exceptional circumstances provided that the reasons for doing so are included in the meeting notice published in the **Federal Register**. RSPA determined that an early date for the first meeting was necessary because the agency timeframe for publication of an NPRM is very short. The temporary regulation that is an issue in this rulemaking expires on July 1, 1999. RSPA was unable to provide 15 days' notice for the first meeting because of delays in contacting potential committee members to confirm their interest in participating. However, RSPA indicated in its June 4 notice of intent that the first meeting of the committee would be scheduled for July 1998. Additionally, RSPA provided a tentative meeting schedule that included the July 28–29 meeting date at the June 23–24 public meeting. Thus, representatives of the identified interests were informed of the meeting date well in advance of the 15 day period. RSPA expects that all Committee members will be present for this first important meeting.

Issued in Washington, DC on July 14, 1998 under authority delegated in 49 CFR Part 1.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration.

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H.R. 651/P.L. 105–189
To extend the deadline under the Federal Power Act for the construction of a hydroelectric project located in the State of Washington, and for other purposes. (July 14, 1998; 112 Stat. 622)

H.R. 652/P.L. 105–190
To extend the deadline under the Federal Power Act for the construction of a hydroelectric project located in the State of Washington, and for other purposes. (July 14, 1998; 112 Stat. 623)

H.R. 848/P.L. 105–191
To extend the deadline under the Federal Power Act applicable to the construction of the AuSable Hydroelectric Project in New York, and for other purposes. (July 14, 1998; 112 Stat. 624)

H.R. 1184/P.L. 105–192
To extend the deadline under the Federal Power Act for the construction of the Bear Creek Hydroelectric Project in the State of Washington, and for other purposes. (July 14, 1998; 112 Stat. 625)

H.R. 1217/P.L. 105–193

To extend the deadline under the Federal Power Act for the construction of a hydroelectric project located in the State of Washington, and for other purposes. (July 14, 1998; 112 Stat. 626)

S. 2282/P.L. 105–194

Agriculture Export Relief Act of 1998 (July 14, 1998; 112 Stat. 627)

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