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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.

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 213 AND 315

RIN 3206–AH82

Student Educational Employment Program

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations governing the Student Educational Employment Program. The regulations recodify the two components of the Program; implement Executive Order 13024, which permits noncompetitive conversion of certain employees of the Student Educational Employment Program to term appointments; clarify certain definitions; and make related editorial changes to part 315.

DATES: Effective date: November 25, 1998.

FOR FURTHER INFORMATION CONTACT: Michael J. Mahoney, 202–606–0830, FAX 202–606–0390, or TDD 202–606–0023.

SUPPLEMENTARY INFORMATION: OPM issued interim regulations with a request for comments on December 2, 1997 (62 FR 63627). Comments were received from two agencies. One agency concurred with our clarifications regarding the definition of ''student'' and ''break in program.'' Another agency suggested that we broaden the definition of ''student'' to include individuals in non-traditional curriculums which do not require them to be in actual physical attendance at an accredited school. We have adopted this suggestion on the basis that actual physical attendance excludes students at accredited schools and institutions who are taking curriculums which do not require them to be present in a traditional classroom setting (e.g., courses whose participation is through correspondence, video-taped lecture/instruction, the internet, or telecon and video-telecon media). We have been operating with the current definition of a student since 1977. At that time, accessible technology had not become so advanced that students regularly took educational courses outside the traditional classroom. We believe this is no longer the case as there is a growing popularity of ''nontraditional'' curricula offered by accredited academic institutions. Removing the requirement for actual physical attendance will benefit agencies by providing them with a wider pool of potential appointees from which to recruit. Likewise, this change will mean career opportunities for a wider population of students.

We are also changing the references to ''Training Expenses'' and ''Tuition Assistance.'' These terms are misleading in that they imply that agencies may use their training authority in 5 U.S.C. chapter 41 and 5 CFR part 410 to pay for any educational or training expense and/or academic degrees. We are clarifying these references to let agencies know they may use their training authority to pay all or part of training expenses directly related to students' official duties.

Documentation on SF–50, Notification of Personnel Action

For noncompetitive conversions from the Student Educational Employment Program to term, career, and career-conditional appointments, agencies should cite Legal Authority Code ZJM on the SF–50, Notification of Personnel Action. The legal authority is Executive Order 12015.

Regulatory Flexibility Act

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

List of Subjects in 5 CFR Parts 213 and 315

Government employees, reporting and recordkeeping requirements.

Office of Personnel Management.

Janice R. Lachance

Director.

Accordingly, OPM is amending part 213 and part 315 of title 5, Code of Federal Regulations, as follows:

PART 213—EXCEPTED SERVICE

1. The authority for part 213 continues to read as follows:

Authority: 5 U.S.C. 3301 and 3302, E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; § 213.101 also issued under 5 U.S.C. 2103; § 213.3102 also issued under 5 U.S.C. 3301, 3302, 3307, 8337(h), and 8456; E.O. 12364, 47 FR 22931, 3 CFR 1982 Comp., p. 185; and 38 U.S.C. 4301 *et seq.*

2. In § 213.3202, paragraphs (a)(2), (a)(9), (b)(2), (b)(9), (b)(11)(i), and (b)(17) are revised to read as follows:

§ 213.3202 Entire executive civil service.

(a) * * *

(2) *Definition of student*: A student is an individual who has been accepted for enrollment, or who is enrolled, as a degree (diploma, certificate, etc.) seeking student in an accredited high school, technical or vocational school, 2-year or 4-year college or university, graduate or professional school. If the student is enrolled, the student must be taking at least a half-time academic/vocational/ or technical course load. The definition of *half-time* is the definition provided by the school in which the student is enrolled. Students need not be in actual physical attendance, so long as all the other requirements are met. An individual who needs to complete less than the equivalent of half an academic/vocational or technical courseload in the class enrollment period immediately prior to graduating is still considered a student for purposes of this program.

* * * * *

(9) *Training expenses*: Observing the prohibitions in 5 U.S.C. 4107, agencies may use their training authority in 5 U.S.C. chapter 41 and 5 CFR part 410 to pay all or part of training expenses directly related to students' official duties.

* * * * *

(b) * * *

(2) *Definition of student*: A student is an individual who has been accepted for enrollment, or who is enrolled, as a degree (diploma, certificate, etc.) seeking student in an accredited high

school, technical or vocational school, 2-year or 4-year college or university, graduate or professional school. If the student is enrolled, the student must be taking at least a half-time academic/ vocational/ or technical course load. The definition of *half-time* is the definition provided by the school in which the student is enrolled. Students need not be in actual physical attendance, so long as all the other requirements are met. An individual who needs to complete less than the equivalent of half an academic/ vocational or technical courseload in the class enrollment period immediately prior to graduating is still considered a student for purposes of this program.

(9) *Training expenses*: Observing the prohibitions in 5 U.S.C. 4107, agencies may use their training authority in 5 U.S.C. chapter 41 and 5 CFR part 410 to pay all or part of training expenses directly related to students' official duties.

* * * * *

(11) *Program requirements for noncompetitive conversion*. (i) *Students*, who are U.S. citizens, may be noncompetitively converted from the Student Career Experience Program to a term, career or career-conditional appointment under Executive Order 12015 (as amended by Executive Order 13024) when students have:

* * * * *

(17) *Tuition assistance*. Observing the prohibitions in 5 U.S.C. 4107, agencies may use their training authority in 5 U.S.C. chapter 41 and 5 CFR part 410 to pay all or part of training expenses directly related to students' official duties.

* * * * *

PART 315—CAREER AND CAREER-CONDITIONAL EMPLOYMENT

4. The authority citation for part 315 continues to read:

Authority: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., page 218, unless otherwise noted.

Secs. 315.601 and 315.609 also issued under 22 U.S.C. 3651 and 3652.

Secs. 315.602 and 315.604 also issued under 5 U.S.C. 1104.

Sec. 315.603 also issued under 5 U.S.C. 8151.

Sec. 315.605 also issued under E.O. 12034, 3 CFR, 1978 Comp., p. 111.

Sec. 315.606 also issued under E.O. 11219, 3 CFR, 1964–1965 Comp., p. 303.

Sec. 315.607 also issued under 22 U.S.C. 2506.

Sec. 315.608 also issued under E.O. 12721, 3 CFR, 1990 Comp., p. 293.

Sec. 315.610 also issued under 5 U.S.C. 3304(d).

Sec. 315.710 also issued under E.O. 12596, 3 CFR, 1987 Comp., p. 229.

Subpart I also issued under 5 U.S.C. 3321, E.O. 12107, 3 CFR, 1978 Comp., p. 264.

5. In § 315.201, paragraph (b)(1)(ix) is revised to read as follows:

§ 315.201 Service requirement for career tenure.

* * * * *

(b) * * *

(1) * * *

(ix) The date of nontemporary excepted appointment under § 213.3202(b) of this chapter, provided the student's appointment is converted to career or career-conditional appointment under Executive Order 12015, with or without an intervening term appointment, and without a break in service of one day.

* * * * *

[FR Doc. 98–28473 Filed 10–23–98; 8:45 am]

BILLING CODE 6325–01–P

DEPARTMENT OF AGRICULTURE

7 CFR Part 457

RIN 0563–AB65

Common Crop Insurance Regulations, Nursery Crop Insurance Provisions; Correction

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final rule that was published in the **Federal Register** on Thursday, September 24, 1998 (63 FR 50965–50979). The rule pertains to the insurance of nursery crops.

EFFECTIVE DATE: October 23, 1998.

FOR FURTHER INFORMATION CONTACT: Vondie O'Conner, Director, Research and Evaluation Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–6343.

SUPPLEMENTARY INFORMATION:

Background

The final rule that is the subject of this correction was intended to provide policy changes to better meet the needs of the insured.

Need For Correction

As published, the final regulation contains errors which may prove misleading.

Section 6(h) indicates that an insured electing catastrophic insurance coverage may obtain a written agreement, but such agreements are prohibited by section 11 of the Catastrophic Risk Protection Endorsement. Even though the Catastrophic Risk Protection Endorsement would govern the crop provisions, FCIC does not want to mislead growers into believing such an agreement would be obtainable. Instead, FCIC may provide a waiver on a case-by-case basis if the insured presents acceptable records to prove actual inventory value if the section 6(h) restrictions cause the insured to undervalue inventory.

Section 7(a) of the Nursery Crop Provisions concerning premium calculation states that it is in lieu of section 7(a) of the Basic Provisions when the correct citation is section 7(c).

In section 15, the single unit example had the wrong mathematical symbol in two locations. In step one the multiplication symbol should have been the symbol for division. In step two, the multiplication symbol should have been the symbol for subtraction. In the multiple unit multiple loss example, the numbers in the second step one are incorrect. $66,400 should be divided by $83,000 to equal .80.

Section 5(a) of the Nursery Peak Inventory Endorsement contained in § 457.163 refers to the ''coverage term.'' This is a clerical error that should refer to ''premium rate.'' Section 5(a) also refers to a ''proration factor'' but should refer to ''a premium adjustment factor.''

Correction of Publication

Accordingly, the publication on September 24, 1998, of the final regulation at 63 FR 50965–50979 is corrected as follows:

PART 457—[CORRECTED]

§ 457.162 [Corrected]

On page 50977, in the first column, in § 457.162, section 6(h) of the crop provisions is corrected to read as follows:

For catastrophic insurance coverage only: (1) Your plant inventory value report for container grown nursery plants cannot exceed the lesser of the actual value from section 6(e) or 150 percent of your previous year's sales of container grown nursery plants; (2) Your plant inventory value report for field grown nursery plants cannot exceed the lesser of the actual value from section 6(e) or 250 percent of your previous years' sale of field grown nursery plants, and if the above restrictions cause you to under report the value of your inventory, you must present records acceptable to us to prove your actual inventory value to receive a waiver of these restrictions.

On page 50977, in the first column, in § 457.162, section 7(a) is corrected to read as follows:

In lieu of section 7(c) of the Basic Provisions, we will determine your premium by multiplying the amount of insurance by the appropriate premium rate and by the premium adjustment factors listed on the actuarial documents that may apply.

On page 50978, in the first and second columns, in § 457.162, section 15 of the crop provisions, the single unit example, steps one and two, are corrected to read as follows:

''Step (1) Determine the under report factor
$100,000 ÷ $125,000 =.80;
Step (2) Field market value A minus field market value B
$125,000 − $80,000 = $45,000;

On page 50978, in the third column, in § 457.162, section 15, the multiple unit multiple loss example, the second step one, is corrected to read as follows:

Step (1) Determine the under report factor
$66,400 ÷ $83,000 =.80;''

§ 457.163 [Corrected]

On page 50979, in the second column, in § 457.163, section 5(a) of the endorsement is corrected to read as follows:

The premium for this endorsement is determined by multiplying the peak amount of insurance by the appropriate premium rate and by any premium adjustment factors listed on the actuarial documents that may apply.

Signed in Washington DC, on October 19, 1998.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 98–28541 Filed 10–23–98; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 28

[Docket No. 98–16]

RIN 1557–AB58

International Banking Activities

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is amending its regulation governing international lending. This amendment removes the lengthy discussion concerning the accounting for fees on international loans and instead states that the accounting for these fees is to conform to generally accepted accounting principles (GAAP). The amendment is intended to simplify the rule and eliminate unnecessary burden.

EFFECTIVE DATE: This final rule is effective January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Tom Rees, Senior Accountant, Bank Supervision Policy, (202) 874–5180; Frank Carbone, Senior International Advisor, International Banking & Finance, (202) 874–4730; Raija Bettauer, Counselor for International Activities, (202) 874–0680; or Mark Tenhundfeld, Assistant Director, Legislative and Regulatory Activities, (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street, S.W., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Background

The International Lending Supervision Act of 1983 (ILSA), 12 U.S.C. 3901 *et seq.*, requires, among other things, that the OCC and other Federal banking agencies issue regulations governing accounting for fees charged by banks in connection with international loans (*i.e.*, those loans reported on a bank's Country Exposure Report, form FFIEC 009). In order to avoid excessive debt service burden on debtor countries, section 906(a) of ILSA (12 U.S.C. 3905(a)) prohibits a bank, in connection with restructuring an international loan, from charging fees in an amount that exceeds the administrative costs of restructuring the loan, unless the fee is amortized over the life of the loan. Section 906(b) of ILSA (12 U.S.C. 3905(b)) requires that the OCC prescribe the accounting treatment for agency, commitment, management, and other fees in connection with international loans to assure that the appropriate portion of these fees is accrued in income over the effective life of each loan.

When the OCC first published its rules on accounting for international loan fees in 1984 (*see* 49 FR 12192 (March 29, 1984)), the OCC determined that the application of the fee accounting principles for banks then set out in GAAP did not ensure a uniform accounting treatment for international loan fees. Accordingly, the OCC adopted detailed rules governing the accounting treatment for various types of fees generated in connection with international loans. The preamble to the 1984 rule stated, however, that the OCC would reexamine whether the rule needed to discuss the accounting treatment if the Financial Accounting Standards Board (FASB) were to issue further guidance on the accounting for fees on international loans. Since then, FASB has amended GAAP to provide that guidance.

Proposal

In April of this year, the OCC published a proposed rule that invited comment on whether the OCC should remove the lengthy discussion in § 28.53 concerning the accounting treatment for fees on international loans and replace it with a statement that the accounting is to conform to GAAP. *See* 63 FR 16708 (April 6, 1998). The OCC received one comment, from an individual who supported the proposal in its entirety.

Final Rule

The OCC is adopting the proposal without change. Accordingly, upon the effective date of this final rule, national banks will be required to follow GAAP in accounting for fees on international loans, subject to the amortization requirement for fees charged in connection with restructuring an international loan that exceed the administrative cost of the restructuring. In the event that GAAP rules regarding fee accounting for international loans changes, the OCC will reexamine its rule to assess the need for further revision.

The final rule reduces the regulatory burden on banks and simplifies the OCC's requirements by replacing the discussion of the separate accounting methods for different types of fees on international loans with a reference to GAAP. As noted in the preamble to the proposed rule, while there are some differences between the language in § 28.53 that is being removed and the GAAP standard (Financial Accounting Standard No. 91), these differences are relatively minor. For instance, GAAP requires a method for recognizing fees and administrative costs of originating, restructuring, or syndicating international loans that is slightly different from the method required by former § 28.53. However, adoption of the GAAP standard will not impose additional burden on banks, and will reduce burden in some instances.

This final rule does not affect, in any way, the standards by which a bank recognizes loss on international assets affected by transfer risk,[1] nor does it change the accounting treatment of a bank's transfer risk reserve. As discussed earlier, the final rule merely changes the accounting treatment of fees that banks collect on international loans

[1] ''Transfer risk'' arises from an obligor's inability to perform on its debt obligations using the agreed-upon currency because of a lack of, or restraints on the availability of, needed foreign exchange in the country of the obligor.

by adopting GAAP accounting requirements for fee income on loans.

The change summarized above removes the need to define the terms ''international syndicated loan'' and ''loan agreement,'' which are used only in the discussion in former § 28.53. Accordingly, the rule amends § 28.51 by removing the definitions of ''international syndicated loan'' and ''loan agreement'' from § 28.51 (e) and (f), respectively, and redesignating the remaining definitions as appropriate.

Regulatory Flexibility Act

It is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities. As is explained in the preamble to this final rule, there is only one substantive change, and this change will simplify the regulation to make it consistent with GAAP. The rule reduces the regulatory burden on all national banks that make international loans, regardless of size. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 12866

The OCC has determined that this final rule is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Act of 1995

The OCC has determined that this final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of more than $100 million in any one year. Accordingly, consistent with section 202 of the Unfunded Mandates Act of 1995 (2 U.S.C. 1532), the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered. As discussed in the preamble, the rule simplifies the discussion concerning the accounting for fees on international loans to make the regulation consistent with generally accepted accounting principles. The rule also makes other nonsubstantive changes to subpart C of Part 28 that are intended to clarify and simplify the rule.

List of Subjects in 12 CFR Part 28

Foreign banking, National banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set out in the preamble, the OCC amends part 28 of chapter I of title 12 of the Code of Federal Regulations as set forth below:

PART 28—INTERNATIONAL BANKING ACTIVITIES

1. The authority citation for part 28 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 93a, 161, 602, 1818, 3102, 3108, and 3901 *et seq.*

§ 28.51 [Amended]

2. Section 28.51 is amended by removing paragraphs (e) and (f), and redesignating paragraphs (g) and (h) as paragraphs (e) and (f), respectively.

3. Section 28.53 is revised to read as follows:

§ 28.53 Accounting for fees on international loans.

(a) *Restrictions on fees for restructured international loans.* No banking institution shall charge, in connection with the restructuring of an international loan, any fee exceeding the administrative costs of the restructuring unless it amortizes the amount of the fee exceeding the administrative cost over the effective life of the loan.

(b) *Accounting treatment.* Subject to paragraph (a) of this section, a banking institution is to account for fees in accordance with generally accepted accounting principles.

Dated: October 14, 1998.

Julie L. Williams,

Acting Comptroller of the Currency.

[FR Doc. 98–28593 Filed 10–23–98; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–ANE–37; Amendment 39–10857; AD 96–18–08 R1]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney PW2000 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to Pratt & Whitney PW2000 series turbofan engines, that currently requires a reduction in the cyclic service life limit for hubs, disks, airseals, blade retaining plates, and airsealing ring supports on certain high pressure turbines (HPT) and low pressure turbines (LPT), and provides for optional inspections for cracks or rework of certain HPT and LPT hardware in order to retain the original, higher cyclic service life limit for these components. This amendment clarifies questions from operators regarding 2nd stage HPT hub detail vs. assembly part numbers (P/Ns). This amendment is prompted by comments from operators describing confusion as to which 2nd stage HPT hubs, identified by P/N, needed to be removed prior to the new life limit. The actions specified by this AD are intended to prevent HPT or LPT failure, which may result in an uncontained engine failure and possible damage to the aircraft.

DATES: Effective November 10, 1998.

The incorporation by reference of Pratt & Whitney Alert Service Bulletin (ASB) No. PW2000 A72–82, Revision 1, dated April 25, 1986, Revision 2, dated July 17, 1986, Revision 3, dated November 7, 1986, Revision 4, dated June 18, 1987; ASB No. PW2000 A72–228, Revision 2, dated May 10, 1988, Revision 3, dated August 25, 1988, Revision 4, dated November 9, 1988; Service Bulletin (SB) No. PW2000 72–450, Original, dated March 13, 1992, Revision 1, dated March 26, 1992, Revision 2, dated April 7, 1992, Revision 3, dated May 29, 1992, Revision 4, dated August 28, 1992; ASB No. PW2000 72–450, Revision 5, dated May 28, 1994, Revision 6, dated July 9, 1996; SB No. PW72–501, Original, dated September 30, 1993; ASB No. PW2000 A72–220, Revision 3, dated April 13, 1989, Revision 4, dated September 20, 1989; SB No. PW2000 72–233, Revision 2, dated September 27, 1988, Revision 3, dated May 30, 1989, as listed in the regulations, was approved previously by the Director of the Federal Register as of November 29, 1996 (61 FR 50984, September 30, 1996).

Comments for inclusion in the Rules Docket must be received on or before December 28, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 95–ANE–37, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9–ad–engineprop@faa.dot.gov''. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Pratt & Whitney, Publications Department, Supervisor Technical Publications Distribution, M/S 132–30, 400 Main St., East Hartford, CT 06108; telephone (860) 565–7700, fax (860) 565–4503.

This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Wego Wang, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7134, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: On August 26, 1996, the Federal Aviation Administration (FAA) issued AD 96–18–08, Amendment 39–9732 (61 FR 50984, September 30, 1996), applicable to Pratt & Whitney PW2000 series turbofan engines, to require a reduction in the cyclic service life limit for hubs, disks, airseals, blade retaining plates, and airsealing ring supports on certain high pressure turbine (HPT) and low pressure turbine (LPT) hardware, and provide for optional inspections for cracks or rework of certain HPT and LPT hardware in order to retain the original, higher cyclic service life limit for these components. That action was prompted by new temperature data from engine testing, which were used in recalculating stress levels, and resulted in a change to the calculated cyclic service life limit. That condition, if not corrected, could result in HPT or LPT failure, which may result in an uncontained engine failure and possible damage to the aircraft.

Since the issuance of that AD, the FAA received comments from operators describing confusion as to which 2nd stage HPT hubs, identified by part number (P/N), needed to be removed prior to the new life limit, in accordance with paragraph (f) of the compliance section.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of this same type design, this AD revises AD 96–18–08 to clarify questions from operators regarding 2nd stage HPT hub detail vs. P/Ns in paragraph (f) of the compliance section.

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

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should 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 notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–ANE–37.'' The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a ''significant regulatory action'' under Executive Order 12866.

It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–9732 (61 FR 50984, September 30, 1996) and by adding a new airworthiness directive, Amendment 39–10857, to read as follows:

96–18–08 R1 Pratt & Whitney: Amendment 39–10857. Docket 95–ANE–37. Revises AD 96–18–08, Amendment 39–9732.

Applicability: Pratt & Whitney Models PW2037, PW2037(M), PW2040, PW2240, and PW2337 turbofan engines, installed on but not limited to, Boeing 757 series and Ilyushin IL96 series aircraft.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent high pressure turbine (HPT) or low pressure turbine (LPT) failure, which may result in an uncontained engine failure and possible damage to the aircraft, accomplish the following:

(a) Remove from service 1st stage HPT disks, Part Number (P/N) 1A5301, prior to exceeding 5,000 total part cycles since new (TPC), if installed with blade retaining plate, P/N 1A6998, and replace with serviceable parts. If blade retaining plate, P/N 1A6998,

has not been installed on disk, P/N 1A5301, the disk may accumulate 15,000 TPC prior to removal from service.

(b) Remove from service 1st stage HPT blade retaining plates, P/N 1A6998, prior to exceeding 5,000 TPC, and replace with serviceable parts. If rework is accomplished prior to exceeding 5,000 TPC in accordance with the Accomplishment Instructions of PW Alert Service Bulletin (ASB) No. PW2000 A72–82, Revision 1, dated April 25, 1986; Revision 2, dated July 17, 1986; Revision 3, dated November 7, 1986; or Revision 4, dated June 18, 1987, and reidentified as assembly P/N 1B2373, the blade retaining plate may accumulate 15,000 TPC prior to removal from service.

(c) Remove from service 2nd stage HPT blade retaining plates, P/N 1B0450, prior to exceeding 7,000 TPC, and replace with serviceable parts.

(d) Remove from service 2nd stage HPT blade retaining plates, P/N 1B0945 (assembly P/N 1B0947), and replace with serviceable parts, in accordance with the Accomplishment Instructions of PW ASB No. PW2000 A72–228, Revision 2, dated May 10, 1988; Revision 3, dated August 25, 1988; or Revision 4, dated November 9, 1988, as follows:

(1) Prior to exceeding 5,000 TPC, for retaining plates that have not been inspected in accordance with the Accomplishment Instructions of the above ASB prior to 3,000 TPC.

(2) Prior to exceeding 8,000 TPC, for retaining plates that have been inspected in accordance with the Accomplishment Instructions of the above ASB prior to 3,000 TPC.

(e) Remove from service 2nd stage HPT hubs, P/N's 1A8302, 1B1002, 1B1202, or 1B4902 prior to exceeding 7,500 TPC, and replace with serviceable hubs. Hubs may accumulate 15,000 TPC prior to removal from service if they are inspected at intervals that do not exceed 6,000 cycles in service since last inspection, in accordance with the Accomplishment Instructions of PW Service Bulletin (SB) No. PW2000 72–450, Original, dated March 13, 1992; Revision 1, dated March 26, 1992; Revision 2, dated April 7, 1992; Revision 3, dated May 29, 1992; Revision 4, dated August 28, 1992; ASB No. PW2000 72–450, Revision 5, dated May 28, 1994; or Revision 6, dated July 9, 1996.

(f) Remove from service all suspect 2nd stage HPT hubs, P/N 1B6602, prior to exceeding 7,500 TPC, and replace with serviceable hubs. The suspect hubs are identified at the assembly level, P/N 1B6232, in Section 1, Planning Information contained in PW SB No. PW2000 72–501, dated September 30, 1993. Hubs may accumulate 15,000 TPC prior to removal from service if hub assemblies are inspected prior to 7,500 TPC to verify scarf cut blades are installed and to inspect the blade platform rail fillet radii dimensions, in accordance with the Accomplishment Instructions of PW SB No. PW2000 72–501, dated September 30, 1993. Hub assemblies found with non-scarf cut blades must be reinspected at intervals not to exceed 6,000 TPC since last inspection. Blades found with under minimum rail fillet radii dimensions must be scrapped.

(g) Remove from service HPT lenticular airseal, P/N 1A8209, prior to exceeding 4,000 TPC, and replace with serviceable airseals. Airseals may accumulate 15,000 TPC prior to removal from service if:

(1) Inspected prior to exceeding 4,000 TPC, and thereafter inspected at intervals not to exceed 250 cycles in service since last inspection, in accordance with Compliance Paragraph E of the Accomplishment Instructions of PW ASB No. PW2000 A72–220, Revision 3, dated April 13, 1989, or Revision 4, dated September 20, 1989; or

(2) The 2nd stage HPT case and vane assembly is reworked and reidentified prior to exceeding 4,000 TPC, in accordance with the Accomplishment Instructions of PW SB No. PW2000 72–233, Revision 2, dated September 27, 1988, or Revision 3, dated May 30, 1989.

(h) For PW2037, PW2037(M), and PW2337 model engines, remove from service 4th stage LPT disks, P/N's 8A1024, 8A1534, or 8A2137 prior to exceeding 17,000 TPC, and replace with serviceable disks.

(i) For PW2040 and PW2240 model engines, remove from service 4th stage LPT disks, P/N's 8A1534 or 8A2137, prior to exceeding 15,000 TPC, and replace with serviceable disks.

(j) Remove from service 3rd stage LPT airsealing ring supports, P/N 8A1783, and replace with serviceable parts, as follows:

(1) For PW2040 and PW2240 model engines, prior to exceeding 15,000 TPC.

(2) For PW2037, PW2037(M), and PW2337 model engines, prior to exceeding 17,000 TPC. Airsealing ring supports may accumulate 20,000 TPC prior to removal from service if they were fluorescent penetrant inspected in accordance with Section 72–53–00 of PW2000 Engine Manual, P/N 1A6231.

(k) For PW2037, PW2037(M), and PW2337 model engines, remove from service prior to exceeding 17,000 TPC, and replace with serviceable parts, as follows:

(1) 4th stage LPT airseal, P/N's 8A1014 or 8A1805.

(2) 5th stage LPT airseal, P/N's 8A1015 or 8A1806.

(3) 7th stage LPT airseal, P/N's A8A1017, A8A1808, 8A2097, or A8A2097.

(l) Parts listed in paragraph (m) of this AD may accumulate 20,000 TPC prior to removal from service if they were fluorescent penetrant inspected for cracks between 12,000 TPC and 17,000 TPC in accordance with Section 72–53–00 of PW2000 Engine Manual, P/N 1A6231.

(m) For PW2040 and PW2240 model engines, remove from service prior to exceeding 15,000 TPC, and replace with serviceable parts, as follows:

(1) 4th stage LPT airseal, P/N's 8A1014 or 8A1805.

(2) 5th stage LPT airseal, P/N's 8A1015 or 8A1806.

(3) 7th stage LPT airseal, P/N's A8A1017, A8A1808, 8A2097, or A8A2097.

(n) Parts listed in paragraph (m) of this AD may accumulate the following TPC prior to removal if they were fluorescent penetrant inspected for cracks between 10,000 TPC and 15,000 TPC in accordance with Section 72–53–00 of PW2000 Engine Manual, P/N 1A6231:

(1) 4th stage LPT airseal, P/N's 8A1014 or 8A1805, prior to exceeding 18,000 TPC.

(2) 5th stage LPT airseal, P/N's 8A1015 or 8A1806, prior to exceeding 19,000 TPC.

(3) 7th stage LPT airseal, P/N's A8A1017, A8A1808, 8A2097, or A8A2097, prior to exceeding 20,000 TPC.

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

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

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

(q) The actions required by this AD shall be done in accordance with the following PW service documents:

Document No.	Pages	Revision	Date
ASB No. PW2000:			
A72–82	1	1	April 25, 1986.
	2–6	Original	June 7, 1985.
	7–9	1	April 25, 1986.
	10	Original	June 7, 1985.
	11	1	April 25, 1986.
Total Pages: 11.			
ASB No. PW2000:			
A72–82	1	2	July 17, 1986.
	2–6	Original	June 7, 1985.
	7–9	1	April 25, 1986.
	10	Original	June 7, 1985.

Document No.	Pages	Revision	Date
	11	2	July 17, 1986.
Total Pages: 11.			
ASB No. PW2000:			
A72–82	1–4	3	November 7, 1986.
	5,6	Original	June 7, 1985.
	7–14	3	November 7, 1986.
Total Pages: 14.			
ASB No. PW2000:			
A72–82	1	4	June 18, 1987.
	2–4	3	November 7, 1986.
	5,6	Original	June 7, 1985.
	7–12	3	November 7, 1986.
	13	4	June 18, 1987.
	14	3	November 7, 1986.
Total Pages: 14.			
ASB No. PW2000:			
A72–228	1	2	May 10, 1988.
	2	Original	July 6, 1987.
	3	2	May 10, 1988.
	4	1	March 29, 1988.
	5–26	2	May 10, 1988.
Total Pages: 26.			
ASB No. PW2000:			
A72–228	1	3	August 25, 1988.
	2	Original	July 6, 1987.
	3	2	May 10, 1988.
	4	3	August 25, 1988.
	5–19	2	May 10, 1988.
	20	3	August 25, 1988.
	21, 22	2	May 10, 1988.
	23	3	August 25, 1988.
	24–26	2	May 10, 1988.
Total Pages: 26.			
ASB No. PW2000:			
A72–228	1	4	November 9, 1988.
	2	Original	July 6, 1987.
	3	4	November 9, 1988.
	4	3	August 25, 1988.
	5–19	2	May 10, 1988.
	20	3	August 25, 1988.
	21–22	2	May 10, 1988.
	23	3	August 25, 1988.
	24–26	4	November 9, 1988.
Total Pages: 26.			
SB No. PW2000:			
72–450	1–26	Original	March 13, 1992.
Total Pages: 26.			
SB No. PW2000:			
72–450	1	1	March 26, 1992.
	2–11	Original	March 13, 1992.
	12–13	1	March 26, 1992.
	14,15	Original	March 13, 1992.
	16,17	1	March 26, 1992.
	18–21	Original	March 13, 1992.
	22,23	1	March 26, 1992.
	24,25	Original	March 13, 1992.
	26	1	March 26, 1992.
Total Pages: 26.			
SB No. PW2000:			
72–450	1	2	April 7, 1992.
	2,3	Original	March 13, 1992
	4,5	2	April 7, 1992.
	2–11	Original	March 13, 1992.
	12	1	March 26, 1992.
	13	2	April 7, 1992.
	14,15	Original	March 13, 1992.
	16,17	1	March 26, 1992.
	18–21	Original	March 13, 1992.
	22,23	1	March 26, 1992.
	24,25	Original	March 13, 1992.
	26	1	March 26, 1992.
Total Pages: 26.			
SB No. PW2000:			
72–450	1–5	3	May 29, 1992.

Document No.	Pages	Revision	Date
	6–11	Original	March 13, 1992.
	12	1	March 26, 1992.
	13	3	May 29, 1992.
	14	Original	March 13, 1992.
	15–29	3	May 29, 1992.
Total Pages: 29.			
SB No. PW2000:			
72–450	1	4	August 28, 1992.
	2–5	3	May 29, 1992.
	6–11	Original	March 13, 1992.
	12	1	March 26, 1992.
	13	3	May 29, 1992.
	14	Original	March 13, 1992.
	15	4	August 28, 1992.
	16	3	May 29, 1992.
	17	4	August 28, 1992.
	18–29	3	May 29, 1992.
Total Pages: 29.			
ASB No. PW2000:			
72–450	1	5	May 28, 1994.
	2	4	May 28, 1994.
	3–5	3	May 29, 1992.
	6–11	Original	March 13, 1992.
	12	1	March 26, 1992.
	13	3	May 29, 1992.
	14	Original	March 13, 1992.
	15	4	August 28, 1992.
	16	3	May 29, 1992.
	17	4	August 28, 1992.
	18–29	3	May 29, 1992.
Total Pages: 29.			
ASB No. PW2000:			
72–450	1	6	July 9, 1996.
	2	4	May 28, 1994.
	3–5	3	May 29, 1992.
	6–11	Original	March 13, 1992.
	12	1	March 26, 1992.
	13	3	May 29, 1992.
	14	Original	March 13, 1992.
	15	4	August 28, 1992.
	16	3	May 29, 1992.
	17	4	August 28, 1992.
	18–28	3	May 29, 1992.
	29	6	July 9, 1996.
Total Pages: 29.			
ASB No. PW72–501	1–12	Original	September 30, 1993.
Total Pages: 12.			
ASB No. PW2000:			
A72–220	1	3	April 13, 1989.
	2	1	July 29, 1987.
	3–26	3	April 13, 1989.
Total Pages: 26.			
ASB No. PW2000:			
A72–220	1	4	September 20, 1989.
	2	1	July 29, 1987.
	3–6	3	April 13, 1989.
	7–9	4	September 20, 1989.
	10–16	3	April 13, 1989.
	17–27	4	September 20, 1989.
Total Pages: 27.			
SB No. PW2000:			
72–233	1,2	2	September 27, 1988.
	3–7	Original	August 7, 1987.
	8	1	January 22, 1988.
	9,10	2	September 27, 1988.
Total Pages: 10.			
SB No. PW2000:			
72–233	1–4	3	May 30, 1989.
	5	Original	August 7, 1987.
	6	3	May 30, 1989.
	7	Original	August 7, 1987.
	8	1	January 22, 1988.
	9,10	3	May 30, 1989.
Total Pages: 10.			

The incorporation by reference of these service documents was approved previously by the Director of the Federal Register as of November 29, 1996 (61 FR 50984, September 30, 1996). Copies may be obtained from Pratt & Whitney, Publications Department, Supervisor Technical Publications Distribution, M/S 132–30, 400 Main St., East Hartford, CT 06108; telephone (860) 565–7700, fax (860) 565–4503. Copies may be inspected at the FAA, New England Region, Office of Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(r) This amendment becomes effective on November 10, 1998.

Issued in Burlington, Massachusetts, on October 19, 1998.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–28534 Filed 10–23–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29369; Amdt. No. 1895]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment states the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on October 16, 1998.

Richard O. Gordon,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.23 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective December 3, 1998*

Carroll, IA, Arthur N. Neu, GPS RWY 13, Orig
Boise, ID, Boise Air Terminal/Gowen Field, VOR/DME OR TACAN RWY 10L, Orig
Boise, ID, Boise Air Terminal/Gowen Field, NDB RWY 10L, Orig
Wichita, KS, Colonel James Jabara, GPS RWY 36, Orig
Frankfort, KY, Capital City, GPS RWY 6, Orig
Houghton Lake, MI, Roscommon County, VOR OR GPS RWY 9, Amdt 3
Houghton Lake, MI, Roscommon County, VOR OR GPS RWY 27, Amdt 2
St. James, MN, St. James Muni, NDB RWY 32, Amdt 1
Fishers Island, NY, Elizabeth Field, VOR OR GPS–A, Amdt 6
Rugby, ND, Rugby Muni, NDB RWY 12, Amdt 5
Rugby, ND, Rugby Muni, NDB RWY 30, Amdt 6
Rugby, ND, Rugby Muni, GPS RWY 12, Orig
Fairmont, NE, Fairmont State Airfield, GPS RWY 35, Orig
Defiance, OH, Defiance Meml, NDB RWY 12, Amdt 10
Defiance, OH, Defiance Meml, GPS RWY 12, Orig
Findlay, OH, Findlay, GPS RWY 18, Amdt 1
Youngstown, OH, Youngstown Elser Metro, GPS RWY 10, Orig
Ardmore, OK, Ardmore Downtown Executive, GPS RWY 17, Orig
Bartlesville, OK, Bartlesville Municipal, GPS RWY 17, Orig
Bartlesville, OK, Bartlesville Municipal, GPS RWY 35, Orig
Pineville, WV, Kee Field, VOR RWY 25, Amdt 3, CANCELED
Shell Lake, WI, Shell Lake Muni, NDB RWY 32, Amdt 1
Shell Lake, WI, Shell Lake Muni, GPS RWY 32, Orig

[FR Doc. 98–28567 Filed 10–23–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29370; Amdt. No. 1896]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective date of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and

timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion of FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. ALL SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on October 16, 1998.

Richard O. Gordon,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulation (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	SIAP
09/28/98	RI	PROVIDENCE	THEODORE FRANCIS GREEN STATE.	8/6860	ILS RWY 23 AMDT 4...
09/30/98	LA	RUSTON	RUSTON REGIONAL	8/6921	VOR/DME–A, ORIG...
09/30/98	LA	RUSTON	RUSTON REGIONAL	8/6922	NDB RWY 18, ORIG...
10/02/98	MO	FARMINGTON	FARMINGTON REGIONAL	8/6957	NDB RWY 2, AMDT 2A...
10/02/98	MO	FARMINGTON	FARMINGTON REGIONAL	8/6958	NDB OR GPS RWY 20, AMDT 2A...
10/02/98	MO	FARMINGTON	FARMINGTON REGIONAL	8/6959	VOR/DME OR GPS–A, ORIG...
10/05/98	DE	MIDDLETON	SUMMIT	8/6996	GPS RWY 35 ORIG...
10/05/98	DE	MIDDLETON	SUMMIT	8/6997	VOR/DME RNAV RWY 35 AMDT 3...
10/05/98	DE	MIDDLETON	SUMMIT	8/6998	VOR OR GPS–B AMDT 1...
10/05/98	DE	MIDDLETON	SUMMIT	8/6999	NDB OR GPS–A AMDT 6...
10/07/98	KY	LOUISVILLE	LOUISVILLE INTL-STANDIFORD FIELD.	8/7035	GPS RWY 29 ORIG...
10/07/98	WI	JUNEAU	DODGE COUNTY	8/7036	LOC RWY 26, ORIG–A...
10/07/98	WI	JUNEAU	DODGE COUNTY	8/7037	NDB RWY 2, AMDT 10...
10/07/98	WI	JUNEAU	DODGE COUNTY	8/7038	NDB RWY 20, AMDT 8...
10/08/98	AR	HOT SPRINGS	MEMORIAL FIELD	8/7109	NDB RWY 5, AMDT 7...
10/08/98	CA	SAN LUIS OBISPO	SAN LUIS OBISPO COUNTY—MCCHESNEY FIELD.	8/7096	ILS RWY 11 ORIG...
10/08/98	MS	COLUMBUS—WEST POINT—STARKVILLE.	GOLDEN TRIANGLE REGIONAL	8/7087	VOR/DME OR GPS–E, AMDT 5... CORRECTS TL 98–22
10/08/98	TX	DALLAS—FORT WORTH	DALLAS—FORT WORTH INTL	8/7082	ILS RWY 13R, AMDT 5...
10/08/98	TX	DALLAS—FORT WORTH	DALLAS—FORT WORTH INTL	8/7083	CONVERGING ILS RWY 13R, AMDT 4A...
10/09/98	ME	AUBURN—LEWISTON	AUBURN—LEWISTON MUNI	8/7140	VOR/DME OR GPS–A ORIG–A...
10/09/98	ME	BANGOR	BANGOR INTL	8/7139	VOR/DME RWY 15 AMDT 3...
10/09/98	ME	BAR HARBOR	HANCOCK COUNTY	8/7137	LOC/DME BC RWY 4 AMDT 1A...

FDC date	State	City	Airport	FDC No.	SIAP
10/09/98	ME	WATERVILLE	WATERVILLE ROBERT LEFLEUR	8/7138	VOR/DME OR GPS RWY 5 AMDT 7A...
10/09/98	NY	ANGOLA	ANGOLA	8/7144	GPS RWY 1 ORIG...
10/09/98	WI	APPLETON	OUTAGAMIE COUNTY REGIONAL	8/7127	ILS RWY 3, AMDT 16B...
10/09/98	WI	APPLETON	OUTAGAMIE COUNTY REGIONAL	8/7128	ILS RWY 29, AMDT 2...
10/09/98	WI	APPLETON	OUTAGAMIE COUNTY REGIONAL	8/7129	VOR/DME OR GPS RWY 21, ORIG...
10/09/98	WI	APPLETON	OUTAGAMIE COUNTY REGIONAL	8/7132	VOR/DME RWY 3, AMDT 8A...
10/09/98	WI	APPLETON	OUTAGAMIE COUNTY REGIONAL	8/7133	NDB OR GPW RWY 3, AMDT 14B...
10/09/98	WI	APPLETON	OUTAGAMIE COUNTY REGIONAL	8/7134	LOC BC RWY 11, AMDT 1...
10/09/98	WI	APPLETON	OUTAGAMIE COUNTY REGIONAL	8/7135	LOC BC RWY 21, ORIG...
10/09/98	WI	APPLETON	OUTAGAMIE COUNTY REGIONAL	8/7136	NDB RWY 29, AMDT 1...
10/09/98	WV	MOUNDSILLE	MARSHALL COUNTY	8/7145	VOR/DME OR GPS–A AMDT 1...
10/09/98	WV	PETERSBURG	GRANT COUNTY	8/7146	VOR/DME OR GPS–A AMDT 1...

[FR Doc. 98–28568 Filed 10–23–98; 8:45 am]
BILLING CODE 4910–13–M

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 422

RIN 0960–AE66

Listening-In to or Recording Telephone Conversations

AGENCY: Social Security Administration (SSA).

ACTION: Final rules.

SUMMARY: These final rules add regulations relating to the use of SSA's telephone lines. In the new regulations, we describe the limited circumstances under which SSA employees may listen-in to or record telephone conversations and the procedures we will follow in connection with this activity.

EFFECTIVE DATE: These final regulations are effective November 25, 1998.

FOR FURTHER INFORMATION CONTACT: Lois Berg, Legal Assistant, Office of Process and Innovation Management, Social Security Administration, L2109 West Low Rise Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1713 or TTY (410) 966–5609. For information on eligibility, claiming benefits, or coverage of earnings, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778.

SUPPLEMENTARY INFORMATION:

Background

On August 8, 1996, the Federal Information Resources Management Regulation (FIRMR) was repealed. A provision of the FIRMR, section 201–21.603, related to listening-in to or recording telephone conversations. As a result of the repeal of the FIRMR, we are now promulgating our own regulations describing the limited circumstances under which SSA employees may listen-in to or record telephone conversations. These circumstances include law enforcement/national security, public safety, public service monitoring, and all-party consent situations. We also describe in these final regulations the procedures we will follow in determining the circumstances in which we will permit listening-in to or recording telephone conversations, who will listen-in to or record the conversations, and other policies and procedures which we will follow in connection with this activity.

SSA is committed to providing the public with the highest level of service by ensuring that information provided by SSA employees is delivered accurately and courteously. To ensure that commitment, we conduct monitoring of telephone calls over various designated SSA telecommunications lines as a training and mentoring tool.

We believe service observation is necessary to effectively perform SSA's mission. Therefore, we also conduct monitoring of telephone conversations to provide an objective assessment of SSA's telephone accuracy and courtesy. Data obtained through service observation are also used to comply with a congressional request that SSA provide Congress with information regarding teleservice center service levels on a continuing basis. This is done in the agency's Annual Financial Statement of Major Performance Measures. SSA's service observation activities are valuable to the public, not only because the data obtained are used to evaluate the accuracy of SSA's teleservice, but also because the service observation findings are used to make recommendations for improving teleservice procedures and processes. Data obtained through service observation are also used to respond to other oversight groups on how well SSA serves the public, for corrective action recommendation purposes, and for assisting in agency planning and decisionmaking.

Finally, SSA currently conducts recording of incoming calls on the emergency telephone lines assigned to SSA headquarters. We believe the recording of emergency calls is in the best interest of public safety and agency emergency service.

The main purpose of these final regulations is to inform the public and SSA employees of the circumstances under which SSA will listen-in to or record telephone conversations. The final regulations also contain language which differs from the repealed FIRMR which prohibited the annotating, e.g., writing down, of personal information such as a beneficiary's name, Social Security number, etc., when monitoring telephone calls. Because SSA has the responsibility to pay benefits correctly and to provide the public with accurate information, as well as to safeguard the trust funds, the final regulations will allow authorized employees to write down personal information obtained when listening-in to telephone calls. Annotated information obtained from public service monitoring will be used for programmatic or policy purposes; e.g., for recontacting individuals to correct or supplement information relating to benefits, for assessment of current/proposed policies and procedures, or to correct SSA records, etc.

Explanation of Final Regulations

We are adding a new subpart H to part 422 of our rules which will contain regulations relating to the use of SSA's telephone lines. This new subpart H contains three sections. In § 422.701, we

explain the scope and purpose of subpart H. In § 422.705, we explain when SSA employees may listen-in to or record telephone conversations. Finally, in § 422.710, we describe the procedures we will follow when we plan to listen-in to or record telephone calls, who will do it, and other policies and procedures which we will follow.

Comments on Notice of Proposed Rulemaking (NPRM)

On March 11, 1998, we published proposed rules in the **Federal Register** at 63 FR 11856 and provided a 60-day period for interested individuals and organizations to comment. We received two letters from organizations with comments. Following are summaries of the comments and our responses to them.

Comment: One commenter was of the opinion that the proposed regulations would have a chilling effect on the ability of SSA to effectively carry out its purpose of serving the public, especially in the matter of disability claims.

Response: SSA has conducted an ongoing evaluation of SSA's 800 number service since 1989. This evaluation involves the monitoring of 800 number telephone calls in order to ensure that the public is receiving accurate and courteous service. These data are reported to Congress each year in the Agency's Annual Financial Statement of Major Performance Measures and for training purposes.

Comment: One of the commenters indicated the use of a recording advising claimants that their conversations may be monitored could seriously undermine the confidence of the public in the entire system. However, the other commenter was pleased that the regulations contained language that the Agency will provide notice to the public about SSA telephone monitoring.

Response: To our knowledge, there has been no negative impact resulting from SSA's use of an upfront service observation message to let 800 number callers know that their calls may be monitored for quality assurance purposes.

Comment: One commenter indicated the regulations presume consent when there is none and provide absolutely no protection for employees.

Response: All callers whose telephone calls have the possibility of being monitored for quality assurance purposes receive a message before speaking with an SSA representative. If a caller does not wish to consent to monitoring, the caller can choose to terminate the call or request that the call not be monitored.

SSA and the American Federation of Government Employees have bargained and reached agreement on telephone monitoring practices which take place in the Agency. Affected employees are also aware of SSA telephone monitoring practices.

Comment: One commenter questioned the need for regulations that permit virtual total discretion in monitoring SSA telephone calls, which includes the use of unannounced service observation.

Response: The anonymity and lack of notice to employees when unannounced monitoring is employed provides SSA with an unbiased measurement of telephone service. Unannounced monitoring currently allows the Agency to provide an objective assessment of SSA's 800 number accuracy and courtesy which is submitted to Congress in the Agency's Annual Financial Statement of Major Performance Measures. These data are also used to respond to other oversight groups on how well SSA serves the public, for corrective action recommendations purposes and to assist in Agency planning and decisionmaking.

Comment: One commenter indicated the regulations should limit the number of people who can monitor telephone calls.

Response: The number of people assigned to monitor SSA telephone calls is a management decision based upon SSA's needs at any given time.

Comment: One commenter was of the opinion that unannounced listening to speaker phone conversations is not acceptable.

Response: SSA agrees that failing to identify all persons listening to a speaker phone conversation is discourteous, but courtesy issues are not an appropriate subject for these regulations. Moreover, there are times when discretion would be used, e.g., on whether to disrupt a speaker simply to notify all parties to the conversation that an individual who could overhear the conversation entered the area.

Comment: One commenter indicated SSA should use annotated information obtained from service observation only for programmatic and policy purposes.

Response: The regulation language on the use of annotated information is appropriate as most annotated information obtained from service observation will be used for programmatic or policy purposes.

Comment: One commenter indicated SSA should commit to taking corrective action and eliminate the phrase ''when possible''.

Response: It is not possible for SSA to commit to taking corrective action every time an incorrect action is taken or incorrect information is provided which could affect the payment of or eligibility to SSA benefits. This is because monitored calls do not always contain sufficient identifying information, such as a caller's name, address, telephone number and/or Social Security number, to allow corrective action to be taken.

For the reasons given in our responses to the comments on the proposed rules, we have not changed the text of the proposed rules. Therefore, we are publishing the proposed regulations unchanged as final regulations.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules do not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they were not subject to OMB review.

Regulatory Flexibility Act

We certify that these final regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These final regulations impose no additional reporting or recordkeeping requirements necessitating clearance by OMB.

(Catalog of Federal Domestic Assistance Program Nos. 93.773 Medicare-Hospital Insurance; 93.774 Medicare-Supplementary Medical Insurance; 96.001 Social Security-Disability Insurance; 96.002 Social Security-Retirement Insurance; 96.003 Special Benefits for Persons Aged 72 and Over; 96.004 Social Security-Survivors Insurance; 96.005 Special Benefits for Disabled Coal Miners; and 96.006 Supplemental Security Income)

List of Subjects in 20 CFR Part 422

Administrative practice and procedure, Freedom of information, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Social security.

Approved: October 13, 1998.

Kenneth S. Apfel,

Commissioner of Social Security.

For the reasons set out in the preamble, we are amending part 422 of chapter III of title 20 of the Code of Federal Regulations as follows:

PART 422—ORGANIZATION AND PROCEDURES

1. Subpart H is added to Part 422 to read as follows:

Subpart H—Use of SSA Telephone Lines

Sec.
422.701 Scope and purpose.
422.705 When SSA employees may listen-in to or record telephone conversations.
422.710 Procedures SSA will follow.

Subpart H—Use of SSA Telephone Lines

Authority: Secs. 205(a) and 702(a)(5) of the Social Security Act (42 U.S.C. 405 and 902(a)(5)).

§ 422.701 Scope and purpose.

The regulations in this subpart describe the limited circumstances under which SSA is authorized to listen-in to or record telephone conversations. The purpose of this subpart is to inform the public and SSA employees of those circumstances and the procedures that SSA will follow when conducting telephone service observation activities.

§ 422.705 When SSA employees may listen-in to or record telephone conversations.

SSA employees may listen-in to or record telephone conversations on SSA telephone lines under the following conditions:

(a) *Law enforcement/national security*. When performed for law enforcement, foreign intelligence, counterintelligence or communications security purposes when determined necessary by the Commissioner of Social Security or designee. Such determinations shall be in writing and shall be made in accordance with applicable laws, regulations and Executive Orders governing such activities. Communications security monitoring shall be conducted in accordance with procedures approved by the Attorney General. Line identification equipment may be installed on SSA telephone lines to assist Federal law enforcement officials in investigating threatening telephone calls, bomb threats and other criminal activities.

(b) *Public safety*. When performed by an SSA employee for public safety purposes and when documented by a written determination by the Commissioner of Social Security or designee citing the public safety needs. The determination shall identify the segment of the public needing protection and cite examples of the possible harm from which the public requires protection. Use of SSA telephone lines identified for reporting emergency and other public safety-related situations will be deemed as consent to public safety monitoring and recording. (See § 422.710(a)(1))

(c) *Public service monitoring.* When performed by an SSA employee after the Commissioner of Social Security or designee determines in writing that monitoring of such lines is necessary for the purposes of measuring or monitoring SSA's performance in the delivery of service to the public; or monitoring and improving the integrity, quality and utility of service provided to the public. Such monitoring will occur only on telephone lines used by employees to provide SSA-related information and services to the public. Use of such telephone lines will be deemed as consent to public service monitoring. (See § 422.710(a)(2) and (c)).

(d) *All-party consent.* When performed by an SSA employee with the prior consent of all parties for a specific instance. This includes telephone conferences, secretarial recordings and other administrative practices. The failure to identify all individuals listening to a conversation by speaker phone is not prohibited by this or any other section.

§ 422.710 Procedures SSA will follow.

SSA component(s) that plan to listen-in to or record telephone conversations under § 422.705(b) or (c) shall comply with the following procedures.

(a) Prepare a written certification of need to the Commissioner of Social Security or designee at least 30 days before the planned operational date. A certification as used in this section means a written justification signed by the Deputy Commissioner of the requesting SSA component or designee, that specifies general information on the following: the operational need for listening-in to or recording telephone conversations; the telephone lines and locations where monitoring is to be performed; the position titles (or a statement about the types) of SSA employees involved in the listening-in to or recording of telephone conversations; the general operating times and an expiration date for the monitoring. This certification of need must identify the telephone lines which will be subject to monitoring, e.g., SSA 800 number voice and text telephone lines, and include current copies of any documentation, analyses, determinations, policies and procedures supporting the application, and the name and telephone number of a contact person in the SSA component which is requesting authority to listen-in to or record telephone conversations.

(1) When the request involves listening-in to or recording telephone conversations for public safety purposes, the requesting component head or designee must identify the segment of the public needing protection and cite examples of the possible harm from which the public requires protection.

(2) When the request involves listening-in to or recording telephone conversations for public service monitoring purposes, the requesting component head or designee must provide a statement in writing why such monitoring is necessary for measuring or monitoring the performance in the delivery of SSA service to the public; or monitoring and improving the integrity, quality and utility of service provided to the public.

(b) At least every 5 years, SSA will review the need for each determination authorizing listening-in or recording activities in the agency. SSA components or authorized agents involved in conducting listening-in or recording activities must submit documentation as described in § 422.710(a) to the Commissioner of Social Security or a designee to continue or terminate telephone service observation activities.

(c) SSA will comply with the following controls, policies and procedures when listening-in or recording is associated with public service monitoring.

(1) SSA will provide a message on SSA telephone lines subject to public service monitoring that will inform callers that calls on those lines may be monitored for quality assurance purposes. SSA will also continue to include information about telephone monitoring activities in SSA brochures and/or pamphlets as notification that some incoming and outgoing SSA telephone calls are monitored to ensure SSA's clients are receiving accurate and courteous service.

(2) SSA employees authorized to listen-in to or record telephone calls are permitted to annotate personal identifying information about the calls, such as a person's name, Social Security number, address and/or telephone number. When this information is obtained from public service monitoring as defined in § 422.705(c), it will be used for programmatic or policy purposes; e.g., recontacting individuals to correct or supplement information relating to benefits, for assessment of current/proposed policies and procedures, or to correct SSA records. Privacy Act requirements must be

followed if data are retrievable by personal identifying information.

(3) SSA will take appropriate corrective action, when possible, if information obtained from monitoring indicates SSA may have taken an incorrect action which could affect the payment of or eligibility to SSA benefits.

(4) Telephone instruments subject to public service monitoring will be conspicuously labeled.

(5) Consent from both parties is needed to tape record SSA calls for public service monitoring purposes.

(d) The recordings and records pertaining to the listening-in to or recording of any conversations covered by this subpart shall be used, safeguarded and destroyed in accordance with SSA records management program.

[FR Doc. 98–28525 Filed 10–23–98; 8:45 am]

BILLING CODE 4910–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 878

[Docket No. 97N–0199]

General and Plastic Surgery Devices: Reclassification of the Tweezer-Type Epilator

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule to reclassify the tweezer-type epilator from class III (premarket approval) to class I (general controls) when intended to remove hair. FDA is also exempting this device from the premarket notification (510(k)) requirements. This action is taken on the Secretary of Health and Human Services' own initiative based on new information. This action is being taken under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments), the Safe Medical Devices Act of 1990 (the SMDA), and the Food and Drug Administration Modernization Act of 1997 (FDAMA).

DATES: This regulation is effective November 25, 1998.

FOR FURTHER INFORMATION CONTACT: Stephen P. Rhodes, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 11, 1997 (62 FR 31771), FDA issued a proposed rule to reclassify the tweezer-type epilator from class III to class I based on new information respecting such device. FDA also proposed to exempt the device from premarket notification procedures.

Interested persons were given until September 9, 1997, to comment on the proposed rule. During the comment period, FDA received 10 comments.

One comment supported the proposed reclassification from class III to class I without providing any specific reason for endorsing the proposed reclassification. Nine comments were opposed to the proposed reclassification.

1. Two comments raised concerns about the device's safety. They stated that the device could cause burns and scars on the skin if it was improperly manufactured or used. One of these comments mistakenly believed that FDA was also proposing that the device be exempt from the current good manufacturing practices (CGMP's) regulation.

FDA agrees that improper manufacturing and use of the device could result in burns and scars on the skin. FDA also is clarifying for the record that the device was not proposed to be exempt from the CGMP's regulation (21 CFR part 820). FDA, however, believes that these risks can be controlled by general controls such as the CGMP requirements and labeling requirements.

2. Eight comments (from professional associations, a professional magazine, practitioners, a former patient, and a manufacturer) opposed reclassification because they believe the device is not effective in permanently removing unwanted hair. Four of these eight comments stated that there are no published scientific data demonstrating that the device permanently destroys hair. Three of these comments stated that hair is a dielectric material, i.e., a nonconductor of electricity so that it is impossible for electricity to descend through the hair to the dermal papilla and destroy it. Two of these three comments stated that there is no evidence that the device destroys the dermal papilla of hair. Another comment indicated that the effectiveness claims for the device are anecdotal and that there is much information that the device is ineffective.

FDA acknowledges that the published literature contains no evidence of statistically significant data showing that the device is effective in achieving permanent removal of hair. In the proposed rule, FDA described the one published study using the device (Ref. 1) that reported that the difference in the hair counts before and after treatment was not significant. Also in the proposed rule, the agency described the results of two unpublished studies (Refs. 2 and 3) and evaluated these results as being only suggestive of effectiveness in permanently removing hair. Thus, FDA agrees with the comments that there is no body of significant information establishing the effectiveness of the device to permanently remove hair. FDA, however, still believes that the device can be reclassified into class I, because claims for the device can be addressed by the misbranding provision of section 502 of the act (21 U.S.C. 352).

3. Three comments stated that the first sentence of the revised identification statement that ''the tweezer-type epilator is a device intended to remove hair by destroying the papilla of a hair'' is misleading because the phrase ''destroying the papilla of a hair'' is equivalent to stating the device permanently removes hair. They pointed out that this phrase is part of the identification statement of another device intended to remove hair, the needle epilator, 21 CFR 878.5350.

Although there is no universally accepted medical definition of what constitutes permanent removal of hair, FDA acknowledges that the phrase ''destroying the papilla of a hair'' is widely accepted by many to be equivalent to stating the device permanently removes hair. FDA now believes that the use of this phrase in the device identification statement was inaccurate, and in this final rule, is removing this phrase from the device identification.

4. Six comments related to the promotional material for the device. They stated that this material frequently contains false and misleading claims, specifically that the device is effective for permanent or long-term removal of hair. Five of these six comments also stressed that it is FDA's duty to protect the public from false and misleading claims regarding a product's effectiveness and that reclassification into class I could increase the number of such claims.

FDA takes seriously its responsibility to protect the public from false and misleading claims about a product's effectiveness; however, false and misleading claims may be controlled by

a general control, namely the misbranding provision of section 502 of the act. Additionally, FDA acknowledges that there is no statistically significant scientific data available at this time to support promotional claims of permanent or long-term removal of hair through use of the device.

II. FDA's Conclusion

FDA has concluded based on review of the available information that use of the tweezer-type epilator removes hair and that use of the device does not present a potential unreasonable risk to the public health. FDA has also concluded that general controls would provide reasonable assurance of the safety and effectiveness of the device, and therefore, the device should be regulated as a class I device.

On November 21, 1997, the President signed FDAMA into law. Section 206 of FDAMA, in part, added a new section 510(l) to the act (21 U.S.C. 360(l)). Under section 501 of FDAMA, new section 510(l) became effective on February 19, 1998. New section 510(l) provides that a class I device is exempt from the premarket notification requirement under section 510(k) of the act, unless the device is intended for a use which is of substantial importance in preventing impairment of human health or it presents a potential unreasonable risk of illness injury (hereafter ''reserved criteria''). FDA has determined that the device does not meet the reserved criteria, and, therefore, it is exempt from the premarket notification requirements.

FDA also notes that 21 CFR 878.9(a), Limitations of exemptions from section 510(k) of the act, requires manufacturers to submit a premarket notification for any tweezer-type epilator whose intended use is different from the intended use of legally marketed tweezer-type epilators.

III. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this final rule is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this final rule would reduce a regulatory burden for all manufacturers of tweezer-type epilators covered by this rule, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

V. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VI. References

The following references have been placed on display in the Dockets Management Branch (HFA–305), 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Verdich, J., ''A Critical Evaluation of a Method for Treatment of Facial Hypertrichosis in Women,'' *Dermatologica*, 168:87–89, 1984.

2. 515(i) Submission submitted by the Helen Edgar Corp., received September 10, 1996.

3. 515(i) Submission submitted by Removatron International Corp., received September 24, 1996.

List of Subjects in 21 CFR Part 878

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 878 is amended as follows:

PART 878—GENERAL AND PLASTIC SURGERY DEVICES

1. The authority citation for 21 CFR part 878 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

2. Section 878.5360 is revised to read as follows:

§ 878.5360 Tweezer-type epilator.

(a) *Identification*. The tweezer-type epilator is an electrical device intended to remove hair. The energy provided at the tip of the tweezer used to remove hair may be radio frequency, galvanic (direct current), or a combination of radio frequency and galvanic energy.

(b) *Classification*. Class I (general controls). The device is exempt from premarket notification procedures in subpart E of part 807 of this chapter subject to § 878.9.

Dated: October 8, 1998.

D.B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 98–28579 Filed 10–23–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences under the District of Columbia Code

AGENCY: United States Parole Commission, Justice.

ACTION: Interim rule; amendments.

SUMMARY: The U.S. Parole Commission is amending the Point Assignment Table it uses to determine the suitability for parole of prisoners serving sentences under the District of Columbia Code. The amended Point Assignment Table is intended to clarify the scoring instructions pertaining to prisoners whose crimes involve violence, and to make it clear that a prisoner who has negative institutional behavior can improve his record and gain credit for subsequent program achievement. These amendments are intended to ensure that the Point Assignment Table serves as a reliable measure of risk in the case of violent offenders, as well as an accurate of measure of a prisoner's institutional record.

DATES: *Effective Date:* October 26, 1998. Comments must be received by December 1, 1998.

ADDRESSES: Send comments to Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815.

FOR FURTHER INFORMATION CONTACT: Pamela A. Posch, Office of General Counsel, U.S. Parole Commission, 5550

Friendship Blvd., Chevy Chase, Maryland 20815, telephone, (301) 492–5959.

SUPPLEMENTARY INFORMATION: Under Section 11231 of the National Capital Revitalization and Self-Government Improvement Act of 1997 (Pub. L. 105–33) the U.S. Parole Commission assumed, on August 5, 1998, the jurisdiction and authority of the Board of Parole of the District of Columbia to grant and deny parole, and to impose conditions upon an order of parole, in the case of any imprisoned felon who is eligible for parole or reparole under the District of Columbia Code. At 63 FR 39176, Part IV (July 21, 1998), the Commission published interim regulations, with a request for public comments, to govern this new function. These regulations contain a Point Assignment Table that measures the risk of recidivism, the seriousness of the risk, and the institutional record presented by each parole applicant. See 28 CFR 2.80(f).

Use of the Point Assignment Table since August 5, 1998 has shown the need for clarification in some of the application instructions. The amended Point Assignment Table will: (1) Clarify that points scored under Category III for ''high level violence'' are always added to points scored under Category II for ''violence in current offense;'' (2) clarify Category III by explaining that ''other high level violence'' means any offense involving ''high level violence'' except a homicide or attempted murders; (3) amend Category IV by distinguishing between ''aggravated'' and ''ordinary'' negative institutional behavior; and (4) amend Category V by deleting the requirement for ''acceptable institutional behavior'' so that Category V does not conflict with the provision in § 2.80(d) that permits the deduction of points for positive program achievement despite prior ''negative institutional behavior'' during the same time period. (This provision is intended to encourage prisoners to improve their conduct.)

It is to be emphasized that these are not substantive changes to the Point Assignment Table, which has been implemented by the Commission since August 5, 1998, in a manner consistent with the amended instructions.

As implemented since August 5, 1998, the Point Assignment Table at § 2.80 appears to be fulfilling the purpose of providing an improved measure of the risk to the public safety presented by candidates for parole. Preliminary figures show that decisions to override the Point Assignment Table and deny parole notwithstanding a favorable Total Point Score have occurred in approximately ten percent of the cases decided since August 5, 1998. On the other hand, approximately 40 percent of the cases decided under the revised Point Assignment Table were granted parole. (These are prisoners without significant prior records or aggravated current offense factors.) This is consistent with historical rates of parole, on both state and federal levels, in the United States.

The interim regulations, including the Point Assignment Table at § 2.80, remain open for public comment, and will be subject to revision by the Commission as further experience is gained.

Good Cause Finding

The Commission is making these amendments effective on the date of this publication for good cause pursuant to 5 U.S.C. 553(d)(3). This is because the Point Assignment Table is currently being implemented, and the amendments are intended to clarify the Commission's current decisionmaking practice.

Executive Order 12866 and Regulatory Flexibility Statement

The U.S. Parole Commission has determined that this amended interim rule is not a significant rule within the meaning of Executive Order 12866, and the amended interim rule has, accordingly, not been reviewed by the Office of Management and Budget. The amended interim rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Probation and parole, Prisoners.

The Amendment

Accordingly, the U.S. Parole Commission is adopting the following amendments to 28 CFR part 2.

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

Subpart C—District of Columbia Code Prisoners and Parolees

2. The Point Assignment Table at § 2.80(f) is revised to read as follows:

§ 2.80 Guidelines for D.C. Code Offenders.

* * * * *

(f) *Point assignment table.*

* * * * *

POINT ASSIGNMENT TABLE

Category I: Risk of recidivism	(Salient factor score)
10–8 (Very Good Risk)	+0
7–6 (Good Risk):	+1
5–4 (Fair Risk):	+2
3–0 (Poor Risk):	+3
Category II: Current or Prior Violence	**(Type of Risk)**
Note: Use the highest applicable subcategory. If no subcategory is applicable, score = 0.	
A. Violence in current offense, and any felony violence in two or more prior offenses	+4
B. Violence in current offense, and any felony violence in one prior offense	+3
C. Violence in current offense	+2
D. No violence in current offense and any felony violence in two or more prior offenses	+2
E. Possession of firearm in current offense if current offense is not scored as a crime of violence	+2
F. No violence in current offense and any felony violence in one prior offense	+1

POINT ASSIGNMENT TABLE—Continued

Category I: Risk of recidivism	(Salient factor score)
Category III: Death of Victim or High Level Violence	
Note: Use highest applicable subcategory. If no subcategory is applicable, score = 0. A current offense that involved high level violence must be scored under both Category II (A, B, or C) and under Category III.	
A. Current offense was high level or other violence with death of victim resulting:	+3
B. Current offense involved attempted murder:	+2
C. Current offense involved high level violence (other than homicide or attempted murder):	+1
Base Point Score (Total of Categories I–III)	
Category IV: Negative Institutional Behavior	
Note: Use the highest applicable subcategory. If no subcategory is applicable, score = 0.	
A. Aggravated negative institutional behavior involving: (1) assault upon a correctional staff member, with bodily harm inflicted or threatened, (2) possession of a deadly weapon, (3) setting a fire so as to risk human life, (4) introduction of drugs for purposes of distribution, or (5) participating in a violent demonstration or riot:	+2
B. Ordinary negative institutional behavior	+1
Category V: Program Achievement	
Note: Use the highest applicable subcategory. If no subcategory is applicable, score = 0.	
A. No program achievement:	0
B. Ordinary program achievement:	−1
C. Superior program achievement:	−2
Total Point Score (Total of Categories I–V).	

* * * * *

Dated: October 20, 1998.

Michael J. Gaines,

Chairman, U.S. Parole Commission.

[FR Doc. 98–28629 Filed 10–23–98; 8:45 am]

BILLING CODE 4410–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180, 185 and 186

[OPP–300735; FRL–6035–8]

RIN 2070–AB78

Revocation of Tolerances and Exemptions from the Requirement of a Tolerance for Canceled Pesticide Active Ingredients

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule announces the revocation of tolerances for residues of the pesticides listed in the regulatory text. EPA is revoking these tolerances because EPA has canceled the food uses associated with them. The regulatory actions in this document are part of the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA). By law, EPA is required to reassess 33% of the tolerances in existence on August 2, 1996, by August 1999, or about 3,200 tolerances.

DATES: This final rule becomes effective January 25, 1999.

FOR FURTHER INFORMATION CONTACT: For technical information contact: Joseph Nevola, Special Review Branch, (7508C), Special Review and Reregistration Division, Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location: Special Review Branch, CM #2, 6th floor, 1921 Jefferson Davis Hwy., Arlington, VA. Telephone: (703) 308-8037; e-mail: nevola.joseph@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this document apply to me?

You may be affected by this document if you sell, distribute, manufacture, or use pesticides for agricultural applications, process food, distribute or sell food, or implement governmental pesticide regulations. Pesticide reregistration and other actions [see FIFRA section 4(g)(2)] include tolerance and exemption reassessment under FFDCA section 408. In this document, the tolerance actions are final in coordination with the cancellation of associated registrations. Potentially affected categories and entities may include, but are not limited to:

Category	Examples of Potentially Affected Entities
Agricultural Stakeholders.	Growers/Agricultural Workers
	Contractors [Certified/Commercial Applicators, Handlers, Advisors, etc.]
	Commercial Processors
	Pesticide Manufacturers
	User Groups
	Food Consumers
Food Distributors	Wholesale Contractors
	Retail Vendors
	Commercial Traders/Importers
Intergovernmental Stakeholders.	State, Local, and/or Tribal Government Agencies
Foreign Entities	Governments, Growers, Trade Groups

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. If you have any questions regarding the applicability of this action to a particular entity, you can consult with the technical person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

II. How can I get additional information or copies of this or other support documents?

A. Electronically

You may obtain electronic copies of this document and various support documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations'' and then look up the entry for this document under ''Federal Register - Environmental Documents.'' You can also go directly to the ''Federal Register'' listings at http://www.epa.gov/homepage/fedrgstr/.

B. In Person or by Phone

If you have any questions or need additional information about this action, please contact the technical person identified in the ''FOR FURTHER INFORMATION CONTACT'' section. In addition, the official record for this document, including the public version, has been established under docket control number [insert the appropriate docket number], (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as Confidential Business Information (CBI), is available for inspection in Room 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Public Information and Records Integrity Branch telephone number is 703-305-5805.

III. Can I challenge the Agency's final decision presented in this document?

Yes. You can file a written objection or request a hearing by December 28, 1998 in the following manner:

A. By Paper

Written objections and hearing requests, identified by the document control number [OPP–300735], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, room M3708, 401 M St., SW, Washington, DC 20460. Fees accompanying objections and hearing requests shall be labled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, 401 M St., SW, Washington, DC 20460. In person, bring a copy of objections and hearing requests to room 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

B. Electronically

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending e-mail to opp-docket@epamail.epa.gov, per the instructions given in ''ADDRESSES'' above. Electronic copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 or 6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300735]. Do not submit CBI through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository libraries.

IV. What action is being taken?

This final rule revokes the FFDCA tolerances for residues of certain specified pesticides in or on certain specified commodities. EPA is revoking these tolerances because they are not necessary to cover residues of the relevant pesticides in or on domestically treated commodities or commodities treated outside but imported into the United States. These pesticides are no longer used on commodities within the United States and no person has provided comment identifying a need for EPA to retain the tolerances to cover residues in or on imported foods. EPA has historically expressed a concern that retention of tolerances that are not necessary to cover residues in or on legally treated foods has the potential to encourage misuse of pesticides within the United States. Thus it is EPA's policy to issue a final rule revoking those tolerances for residues of pesticide chemicals for which there are no active registrations under FIFRA, unless any person in comments on the proposal demonstrates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated.

EPA is not issuing today a final rule to revoke those tolerances for which EPA received comments demonstrating a need for the tolerance to be retained. Generally, EPA will proceed with the revocation of these tolerances on the grounds discussed above only if, prior to EPA's issuance of a section 408(f) order requesting additional data or issuance of a section 408(d) or (e) order revoking the tolerances on other grounds, commenters retract the comment identifying a need for the tolerance to be retained or EPA independently verifies that the tolerance is no longer needed.

In the **Federal Register** of January 21, 1998 (63 FR 3057) (FRL–5743–8), EPA issued a proposed rule for specific pesticides announcing the proposed revocation of tolerances for canceled active ingredients and inviting public comment for consideration and for support of tolerance retention under FFDCA standards. The following comments were received by the agency in response to the document published in the **Federal Register** of January 21, 1998.

Cyhexatin

1. *Comment from Elf Atochem North America, Inc.* A comment was received by the Agency from Elf Atochem requesting that the tolerances for cyhexatin not be revoked. Elf Atochem claimed it has pending applications for registration including grapes, hops, pome fruit, strawberries, walnuts and macadamia nuts, submitted data on citrus, and stated that it is developing data to support stone fruits and almonds, and wishes to retain the tolerance for milk and for various [fat, kidney, liver, mbyp (exc. kidney & liver), and meat] tolerances on cattle, goats, hogs, horses, and sheep, since several of the raw agricultural commodities (RACs) are fed to livestock.

2. *Comment from OXON ITALIA.* A comment was received by the Agency from OXON ITALIA requesting that the tolerance for cyhexatin on citrus not be revoked. OXON ITALIA stated it is developing residue data for submission to the Agency. In follow-up correspondence to the Agency, OXON ITALIA, through its agent, further committed to provide the data required to maintain the tolerances of cyhexatin on imported citrus crops.

3. *Comment from California Citrus Quality Council.* A comment was received by the Agency from the California Citrus Quality Council (CCQC) requesting that the tolerance for cyhexatin on citrus not be revoked. CCQC cited Elf Atochem's submission that indicated data was being developed and concerns about imports into the United States.

4. *Comment from U.S. Hop Industry Plant Protection Committee.* A comment was received by the Agency from the

U.S. Hop Industry Plant Protection Committee requesting that the tolerance for cyhexatin on hops not be revoked, claiming that a section 18 request was submitted for the 1998 growing season in WA, OR, and ID.

Agency response. Because of Elf Atochem's and OXON ITALIA's interests in developing all data necessary to maintain all existing tolerances, EPA will not revoke the cyhexatin tolerances in 40 CFR 180.144, 185.1350, and 186.1350 at this time.

Phosphamidon

5. *Comment from Washington State Department of Agriculture*. A comment was received by the Agency from the Washington State Department of Agriculture (WSDA) requesting that the tolerance for phosphamidon use on apple not be revoked. Further, WSDA claims that existing stocks may take 6-8 years to exhaust and 2 years to clear trade channels.

6. *Comment from Northwest Wholesale, Inc*. A comment was received by the Agency from the Northwest Wholesale Inc. requesting that the tolerance for phosphamidon use on apple not be revoked and expressed a concern that existing stocks may take 10 years to exhaust.

Agency response. Although EPA intends to revoke the tolerance for phosphamidon on apples, the Agency will not revoke that tolerance on apples in this final rule. The Agency will address the tolerance for phosphamidon on apples in a subsequent **Federal Register** document. With the exception of the tolerance on apple, all other tolerances for phosphamidon in 40 CFR 180.239 will be revoked.

Phosalone

7. *Comment from Rhone-Poulenc Ag Company*. A comment was received by the Agency from Rhone-Poulenc requesting that the tolerances for phosalone be retained for cherries; peaches; plums/prunes; apricots (stone fruits); apples; pears (pome fruit); nuts, almonds only; and grapes, so that those commodities could be legally imported into the United States.

Agency response. EPA will not revoke the tolerances in 40 CFR 180.263 for phosalone use on almond; apple; apricot; cherry; grape; peach; pear; and plum/prune, at this time. In 40 CFR 180.263, the Agency will revoke the tolerances for artichokes; Brazil nuts; butternuts; cashews; cattle, fat; cattle, meat; cattle, mbyp; chestnuts; citrus fruits; filberts; goats, fat; goats, meat; goats, mbyp; hickory nuts; hogs, fat; hogs, meat; hogs, mbyp; horses, fat; horses, meat; horses, mbyp; Macadamia nuts; nectarines; pecans; potatoes; sheep, fat; sheep, meat; sheep, mbyp; and walnuts. Also, the Agency will revoke the tolerances in § 185.4800.

3,4,5-Trimethylphenyl methylcarbamate and 2,3,5-Trimethylphenyl methylcarbamate [Trimethacarb]

8. *Comment from Drexel Chemical Company*. A comment was received by the Agency from Drexel Chemical requesting that the revocation of tolerances for trimethacarb be delayed because Drexel cannot determine if all existing stocks of their product labeled for the uses associated with the subject tolerances have been completely exhausted.

Agency response. Although EPA intends to revoke the tolerances in 40 CFR 180.305 for 3,4,5-Trimethylphenyl methylcarbamate and 2,3,5-Trimethylphenyl methylcarbamate [Trimethacarb], the Agency will not revoke those tolerances in this final rule. The Agency will address the tolerances for trimethacarb in a subsequent **Federal Register** document.

2-(m-Chlorophenoxy) propionic acid [Cloprop]

9. *Comment from the Pineapple Growers Association of Hawaii*. A comment was received by the Agency from the Pineapple Growers Association of Hawaii requesting that the tolerances for cloprop be retained for five years, three years for use of cloprop on pineapples and two years for consumption of the resulting canned pineapple products.

Agency response. EPA will revoke the tolerances in 40 CFR 180.325 for 2-(m-Chlorophenoxy) propionic acid [Cloprop] on pineapple, fodder; and pineapple, forage; and in § 186.850 on pineapple, bran on the grounds that these are no longer considered significant livestock feedsuffs and therefore, the tolerances are not necessary. Although EPA intends to revoke the tolerance on pineapple; the Agency will not revoke that tolerance in this final rule. The Agency will address the tolerance for cloprop on pineapple in a subsequent **Federal Register** document. With the exception of that tolerance on pineapple, all other tolerances for cloprop in 40 CFR 180.325 will be revoked.

Copper linoleate and Copper oleate

10. *Comment from Griffin Corporation*. A comment was received by the Agency from Griffin Corporation requesting that the exemption from a tolerance for copper oleate and copper linoleate in 40 CFR 180.1001 not be revoked if the revocation covers copper salts of fatty and rosin acids, which may affect some of their products.

11. *Comment from Stewart Marine*. A comment was received by EPA from an agent for Stewart Marine requesting that the exemption from a tolerance for copper linoleate not be revoked. Stewart Marine expects to submit a petition for registration of copper linoleate for use as a pesticide as an antifoulant paint.

12. *Comment from WSDA*. A comment was received by the Agency from the WSDA requesting that the exemption from a tolerance for copper oleate not be revoked.

Agency response. Because Griffin Corporation products which contain copper salts of fatty and rosin acids would be impacted by revocation of exemption from a tolerance for copper linoleate and/or copper oleate, EPA will not revoke the exemption from a tolerance in 40 CFR 180.1001(b)(1) for copper linoleate and copper oleate at this time. This will also address the concerns expressed by Stewart Marine and WSDA.

(E,Z)-3,13-Octadecadien-1-ol acetate and (Z,Z)-3,13-Octadecadien-1-ol acetate [ODDA]

13. *Comment from WSDA*. A comment was received by the Agency from the WSDA requesting that the exemption from a tolerance for ODDA in 40 CFR 180.1055 should not be revoked for apricot, cherry, nectarine, peach, plum, and prune trees.

Agency response. Since ODDA is a lepidopteran pheromone, it will remain covered under the broader tolerance exemption of 40 CFR 180.1153 Lepidopteran pheromones; exemption from the requirement of a tolerance. Therefore, the current tolerance exemptions listed for ODDA under 40 CFR 180.1055 are not needed and will be revoked by the Agency.

Malathion

14. *Comment from Interregional Research Project No. 4*. A comment was received by the Agency from Interregional Research Project No. 4. (IR-4), NJ, stating that the exemption from a tolerance for malathion in 40 CFR 180.1067 should be retained because a 24(c) registration is active in California for malathion on listed commodities for use as an insecticide against the Oriental, Mediterranean, and Mexican fruit flies.

Agency response. In this final rule, EPA will not revoke the exemption from a tolerance in 40 CFR 180.1067 for methyl eugenol and malathion combination. The Agency will address the exemption from a tolerance for

malathion under § 180.1067 in a subsequent **Federal Register** document.

V. When do these actions become effective?

These actions become effective 90 days following publication of a final rule in the **Federal Register**. EPA has delayed the effectiveness of these revocations for 90 days following publication of a final rule to ensure that all affected parties receive notice of EPA's action. Consequently, the effective date is January 25, 1999, except where the date is otherwise indicated. For this particular final rule, the actions will affect uses which have been canceled for more than a year. This should ensure that commodities have cleared the channels of trade.

Any commodities listed in the regulatory text of this document that are treated with the pesticides subject to this document, and that are in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by the Food Quality Protection Act (FQPA). Under this section, any residue of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of FDA that, (1) the residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

VI. How do the regulatory assessment requirements apply to this action?

A. Is this a ''significant regulatory action''?

No. Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action.'' The Office of Management and Budget (OMB) has determined that tolerance actions, in general, are not ''significant'' unless the action involves the revocation of a tolerance that may result in a substantial adverse and material affect on the economy. In addition, this action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this action is not an economically significant regulatory action as defined by Executive Order 12866. Nonetheless, environmental health and safety risks to children are considered by the Agency when determining appropriate tolerances. Under FQPA, EPA is required to apply an additional 10-fold safety factor to risk assessments in order to ensure the protection of infants and children unless reliable data supports a different safety factor.

B. Does this action contain any reporting or recordkeeping requirements?

No. This action does not impose any information collection requirements subject to OMB review or approval pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

C. Does this action involve any ''unfunded mandates''?

No. This action does not impose any enforceable duty, or contain any ''unfunded mandates'' as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

D. Do Executive Orders 12875 and 13084 require EPA to consult with States and Indian Tribal Governments prior to taking the action in this notice?

No. Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget (OMB) a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create an unfunded federal mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19,1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Does this action involve any environmental justice issues?

No. This action is not expected to have any potential impacts on minorities and low income communities. Special consideration of environmental justice issues is not required under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

F. Does this action have a potentially significant impact on a substantial number of small entities?

No. The Agency has certified that tolerance actions, including the tolerance action in this document, are not likely to result in a significant adverse economic impact on a substantial number of small entities. The factual basis for the Agency's determination, along with its generic certification under section 605(b) of the Regulatory Flexibility Act (RFA) (5

U.S.C. 601 *et seq.*), appears at 63 FR 55565, October 16, 1998 (FRL–6035–7). This generic certification has been provided to the Chief Counsel for Advocacy of the Small Business Administration.

G. Does this action involve technical standards?

No. This tolerance action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104-113, section 12(d) (15 U.S.C. 272 note). Section 12(d) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

H. Are there any international trade issues raised by this action?

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. When possible, EPA seeks to harmonize U.S. tolerances with CODEX MRLs. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain in a **Federal Register** document the reasons for departing from the Codex level. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual REDs. The U.S. EPA is developing a guidance concerning submissions for import tolerance support. This guidance will be made available to interested stakeholders.

I. Is this action subject to review under the Congressional Review Act?

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

List of Subjects

40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

40 CFR Part 185

Environmental protection, Food additives, Pesticide and pests.

40 CFR Part 186

Environmental protection, Animal feeds, Pesticide and pests.

Dated: September 30, 1998.

Jack E. Housenger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR parts 180, 185, and 186 be amended as follows:

PART 180— [AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. In subpart A, in § 180.2, by revising paragraph (a) to read as follows:

§ 180.2 Pesticide chemicals considered safe.

(a) As a general rule, pesticide chemicals other than benzaldehyde (when used as a bee repellant in the harvesting of honey), ferrous sulfate, lime, lime-sulfur, potassium sorbate, sodium carbonate, sodium chloride, sodium hypochlorite, sulfur, and when used as plant desiccants, sodium metasilicate (not to exceed 4 percent by weight in aqueous solution) and when used as postharvest fungicide, citric acid, fumaric acid, oil of lemon, and oil of orange are not for the purposes of section 408(a) of the Act generally recognized as safe.

* * * * *

§§ 180.115, 180.118, 180.148, 180.158, 180.159, 180.162, 180.171, and 180.219 [Removed]

c. In subpart C, by removing §§ 180.115, 180.118, 180.148, 180.158, 180.159, 180.162, 180.171, and 180.219.

§ 180.239 [Amended]

d. By removing from § 180.239, the entries for ''broccoli''; ''cantaloupes''; ''cauliflower''; ''cottonseed''; ''cucumbers''; ''grapefruit''; ''lemons''; ''oranges''; ''peppers''; ''potatoes''; ''sugarcane''; ''tangerines''; ''tomatoes''; ''walnuts''; and ''watermelons''.

§ 180.263 [Amended]

e. By removing from § 180.263, the entries for ''artichokes''; ''cattle, fat''; ''cattle, meat''; ''cattle, mbyp''; ''citrus fruits''; ''goats, fat''; ''goats, meat''; ''goats, mbyp''; ''hogs, fat''; ''hogs, meat''; ''hogs, mbyp''; ''horses, fat''; ''horses, meat''; ''horses, mbyp''; ''Nuts''; ''nectarines''; ''potatoes''; ''sheep, fat''; ''sheep, meat''; and ''sheep, mbyp''.

§ 180.306 [Removed]

f. By removing § 180.306.

§ 180.319 [Amended]

g. By removing from the table in § 180.319, the entire entry for ''Isopropyl carbanilate (IPC)''.

§ 180.321 [Removed]

h. By removing § 180.321.

§ 180.325 [Amended]

i. By removing from the table in § 180.325, the entries for ''kidneys, cattle''; ''kidneys, goats''; ''kidneys, hogs''; ''kidneys, horses''; ''kidneys, sheep''; ''meat (except kidneys), fat, mbyp, cattle''; ''meat (except kidneys), fat, mbyp, goats'';''meat (except kidneys), fat, mbyp, hogs''; ''meat (except kidneys), fat, mbyp, horses''; ''meat (except kidneys), fat, mbyp, poultry''; ''meat (except kidneys), fat, mbyp, sheep''; ''nectarines''; ''peaches''; ''pineapple, fodder''; and ''pineapple, forage''.

§§ 180.326, 180.347, and 180.357 [Removed]

j. By removing §§ 180.326, 180.347, and 180.357.

k. In subpart D, in § 180.1001, by revising paragraph (b) (1), removing paragraphs (b) (6) and (b) (9) and redesignating paragraphs (b) (7), (b) (8), and (b) (10) as (b) (6), (b) (7), and (b) (8), respectively and removing from the table in paragraph (d) the entry for ''Fumaric acid'' to read as follows:

§ 180.1001 Exemptions from the reqirement of a tolerance.

* * * * *

(b) * * *

(1) The following copper compounds: Bordeaux mixture, basic copper carbonate (malachite), copper hydroxide, copper-lime mixtures, copper linoleate, copper oleate, copper oxychloride, copper octanoate, copper sulfate basic, copper sulfate pentahydrate, cupric oxide, cuprous oxide. These compounds are used primarily as fungicides.

* * * * *

§§ 180.1010, 180.1018, 180.1030, 180.1031, 180.1034, 180.1055, 180.1059, 180.1061, 180.1079, 180.1081, and 180.1085 [Removed]

l. By removing §§ 180.1010, 180.1018, 180.1030, 180.1031, 180.1034, 180.1055, 180.1059, 180.1061, 180.1079, 180.1081, and 180.1085.

PART 185— [AMENDED]

2. In part 185:

a. The aurthority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 348.

§§ 185.1650, 185.3600, 185.4250, 185.4300, and 185.4800 [Removed]

b. By removing §§ 185.1650, 185.3600, 185.4250, 185.4300, and 185.4800.

PART 186— [AMENDED]

3. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

§§ 186.450, 186.850, 186.1650, and 186.2450 [Removed]

b. By removing §§ 186.450, 186.850, 186.1650, and 186.2450.

[FR Doc. 98–28486 Filed 10–23–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180 and 186

[OPP–300733; FRL–6035–6]

RIN 2070–AB78

Revocation of Tolerances for Canceled Food Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule announces the revocation of tolerances for residues of the pesticides listed in the regulatory text. EPA is revoking these tolerances because EPA has canceled the food uses associated with them. The regulatory actions in this document are part of the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA). By law, EPA is required to reassess 33% of the tolerances in existence on August 2, 1996, by August 1999, or about 3,200 tolerances.

DATES: This final rule becomes effective January 25, 1999.

FOR FURTHER INFORMATION CONTACT: For technical information contact: Joseph Nevola, Special Review Branch, (7508C), Special Review and Reregistration Division, Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., S.W., Washington, DC 20460. Office location: Special Review Branch, Crystal Mall #2, 6th floor, 1921 Jefferson Davis Hwy., Arlington, VA. Telephone: (703) 308–8037; e-mail: nevola.joseph@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this document apply to me?

You may be affected by this document if you sell, distribute, manufacture, or use pesticides for agricultural applications, process food, distribute or sell food, or implement governmental pesticide regulations. Pesticide reregistration and other actions [see FIFRA section 4(g)(2)] include tolerance and exemption reassessment under FFDCA section 408. In this document, the tolerance actions are final in coordination with the cancellation of associated registrations. Potentially affected categories and entities may include, but are not limited to:

Category	Examples of Potentially Affected Entities
Agricultural Stakeholders.	Growers/Agricultural Workers Contractors [Certified/Commercial Applicators, Handlers, Advisors, etc.] Commercial Processors Pesticide Manufacturers User Groups Food Consumers
Food Distributors	Wholesale Contractors Retail Vendors Commercial Traders/Importers
Intergovernmental Stakeholders.	State, Local, and/or Tribal Government Agencies
Foreign Entities	Governments, Growers, Trade Groups

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. If you have any questions regarding the applicability of this action to a particular entity, you can consult with the technical person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

II. How can I get additional information or copies of this or other support documents?

A. Electronically

You may obtain electronic copies of this document and various support documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations'' and then look up the entry for this document under ''Federal Register - Environmental Documents.'' You can also go directly to the ''Federal Register'' listings at http://www.epa.gov/homepage/fedrgstr/.

B. In Person or by Phone

If you have any questions or need additional information about this action, please contact the technical person identified in the ''FOR FURTHER INFORMATION CONTACT'' section. In addition, the official record for this document, including the public version, has been established under docket control number [OPP–300733], (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as Confidential Business Information (CBI), is available for inspection in Room 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Public Information and Records Integrity Branch telephone number is 703–305–5805.

III. Can I challenge the Agency's final decision presented in this document?

Yes. You can file a written objection or request a hearing by December 28, 1998, in the following manner:

A. By Paper

Written objections and hearing requests, identified by the document control number [OPP–300733, may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, room M3708, 401 M St., S.W., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, 401 M St., S.W., Washington, DC 20460. In person, bring a copy of objections and hearing requests to room 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

B. Electronically

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending e-mail to opp-docket@epamail.epa.gov, per the instructions given in ''ADDRESSES'' above. Electronic copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 or 6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300733]. Do not submit CBI through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository libraries.

IV. What action is being taken?

This final rule revokes the FFDCA tolerances for residues of certain specified pesticides in or on certain specified commodities. EPA is revoking these tolerances because they are not necessary to cover residues of the relevant pesticides in or on domestically treated commodities or commodities treated outside but imported into the United States. These pesticides are no longer used on commodities within the United States and no person has provided comment identifying a need for EPA to retain the tolerances to cover residues in or on imported foods. EPA has historically expressed a concern that retention of tolerances that are not necessary to cover residues in or on legally treated foods has the potential to encourage misuse of pesticides within the United States. Thus it is EPA's policy to issue a final rule revoking those tolerances for residues of pesticide chemicals for which there are no active registrations under FIFRA, unless any person in comments on the proposal demonstrates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated.

EPA is not issuing today a final rule to revoke those tolerances for which EPA received comments demonstrating a need for the tolerance to be retained. Generally, EPA will proceed with the revocation of these tolerances on the grounds discussed above only if, prior to EPA's issuance of a section 408(f) order requesting additional data or issuance of a section 408(d) or (e) order revoking the tolerances on other grounds, commenters retract the comment identifying a need for the tolerance to be retained or EPA independently verifies that the tolerance is no longer needed.

Although EPA proposed to revise the tolerances in 40 CFR 180.294(a) for benomyl on apple, apricot, cherry, nectarine, peach, pear, and plum (fresh prune), from pre- and post-harvest uses to pre-harvest use, the Agency will not amend those tolerances in this final rule. The Agency will address amending those tolerances for benomyl in a subsequent **Federal Register** document.

The proposed revocation of tolerances in 40 CFR 180.108 for acephate on grass (pasture and range) and grass hay was in error (February 5, 1998, 63 FR 5907) (FRL–5743–9). Though the registrants have requested voluntary deletion of these uses, the 180–day waiting period for the acceptance of these voluntary use deletions has not yet expired. Consequently, the Agency will not take action on the tolerances for acephate on grass (pasture and range) and grass hay in this final rule, but will address those tolerances in a subsequent **Federal Register** document.

In the **Federal Register** of February 5, 1998 (63 FR 5907), EPA issued a proposed rule for specific pesticides announcing the proposed revocation of tolerances for canceled food uses and inviting public comment for consideration and for support of tolerance retention under FFDCA standards. The following comments were received by the agency in response to the document published in the **Federal Register** of February 5, 1998:

Maneb

1. *Comment from Elf Atochem North America, Incorporated.* A comment was received by the Agency from Elf Atochem requesting that the tolerances for maneb not be revoked on the crops apricots; beans, succulent; carrots; celery; nectarines; and peaches. Elf Atochem stated their interest in maintaining the tolerances for import purposes only.

2. *Comment from the Canadian Horticulture Council.* A comment was received by the Agency from the Canadian Horticulture Council (CHC) concerning the proposed tolerance revocation for maneb on celery. The CHC stated that revocation of the tolerance would create a barrier to Canadian exports.

Agency response. Because of Elf Atochem's interest, the Agency will not revoke the tolerances in 40 CFR 180.110 for maneb on apricots; beans, succulent; carrots; celery; nectarines; and peaches at this time. This will also address CHC's concern. The Agency will revoke the tolerances for maneb on rhubarb and spinach.

Ferbam

3. *Comment from the CHC.* A comment was received by the Agency from the CHC concerning the proposed tolerance revocations for ferbam on asparagus, cucumbers, and tomatoes. The CHC stated that revocation of the tolerances would create a barrier to Canadian exports.

Agency response. The Agency will not revoke the tolerances in 40 CFR 180.114 for ferbam use on asparagus, cucumbers, and tomatoes at this time.

4. *Comment from Interregional Research Project No. 4.* A comment was received by the Agency from Interregional Research Project No. 4. (IR–4), New Brunswick, NJ, stating that IR–4 is supporting the uses of ferbam on guava and papaya.

5. *Comment from Washington State Department of Agriculture.* A comment was received by the Agency from the Washington State Department of Agriculture (WSDA) stating that WSDA has an active registration for ferbam use on boysenberries.

Agency response. Since the Interregional Research Project No. 4 (IR–4) is supporting the ferbam uses on guava and papaya with data and because FIFRA section 24(c) registration for ferbam use on blackberries is active in Washington, the Agency will not revoke the tolerances in 40 CFR 180.114 for ferbam use on boysenberry, guava, and papaya. EPA will revoke the tolerances for ferbam on almonds; beets,

with tops; beets, without tops; beet greens alone; broccoli; Brussels sprouts; carrots; cauliflower; celery; collards; corn; currants; dates; eggplants; gooseberries; kale; kohlrabi; melons; mustard greens; onions; peanuts; peppers; plums (fresh prunes); pumpkins; quinces; radishes, with tops; radishes, without tops; radish tops; rutabagas, with tops; rutabagas, without tops; rutabaga tops; spinach; strawberries; summer squash; turnips, with tops; turnips, without tops; and turnip greens.

Fluorine compounds (Cryolite)

6. *Comment from WSDA*. A comment was received by the Agency from the WSDA, which stated that it has an active registration for cryolite use on collards, blackberries, boysenberries, dewberries, loganberries, and youngberries, and requested that EPA not revoke the tolerances for those commodities.

Agency response. The proposed tolerance revocation for fluorine compounds (cryolite) on collards was an error and this tolerance will not be revoked. There is a FIFRA section 3 registered use on collards and the use appears in the Cryolite RED document issued August, 1996, listed as eligible for reregistration. However, there is no FIFRA section 3 registration for the use of cryolite on any of the berries listed in the comment above. EPA has sent letters dated May 12, 1998 to notify the States of Oregon and Washington that the Agency does not consider the use of cryolite on these small berries to be valid under section 24(c) for any purposes under FIFRA. Therefore, the tolerances in 40 CFR 180.145 for cryolite use on blackberries, boysenberries, dewberries, loganberries, and youngberries will be revoked along with the tolerances on apples; apricots; beans; beets, tops; carrots; corn; kale; mustard greens; nectarines; okra; peanuts; pears; peas; quinces; radish, tops; rutabagas, tops; and turnip, tops.

Diazinon

7. *Comments from the European Union, the Oahu Banana Growers Association, University of Hawaii, and individuals*. Comments were received by the Agency from various sources which requested that the tolerance for diazinon use on bananas not be revoked. Some cited the need to control the spread of Banana Bunchy Top Virus (BBTV) disease. Additionally, a FIFRA section 24(c) registration for diazinon use on bananas is active in Hawaii.

Agency response. At this time, the Agency will not revoke the tolerance in 40 CFR 180.153 for diazinon on bananas due to the active FIFRA section 24(c) registration in Hawaii. Diazinon is currently in the reregistration process. The tolerance for diazinon use on bananas will be reviewed with other diazinon tolerances as part of this process.

Dimethyl (2,2,2-trichloro-1-hydroxyethyl) phosphonate [Trichlorfon]

8. *Comments from Bayer Corporation and WSDA*. A comment was received by the Agency from Bayer Corporation initially requesting that the tolerances for dimethyl (2,2,2-trichloro-1-hydroxyethyl) phosphonate, called trichlorfon, not be revoked on cattle, fat; cattle, mbyp; cattle, meat; horses, fat; horses, mbyp; horses, meat; sheep, fat; sheep, mbyp; and sheep, meat. However, in a follow-up communication with EPA, Bayer Corporation decided it will limit its support to the existing cattle tolerances and does so for import purposes. Also, WSDA requested that the Agency not revoke the trichlorfon tolerances for use on cattle.

Agency response. The Agency will not revoke the tolerances in 40 CFR 180.198 for trichlorfon on cattle, fat; cattle, mbyp; and cattle, meat; since Bayer Corporation has committed to support those tolerances with the appropriate data through an agreement with the Agency. This will also address WSDA's concern. However, EPA will revoke the other tolerances for trichlorfon in 40 CFR 180.198 and 186.2325 as listed in the regulatory text.

Trifluralin

9. *Comment from WSDA*. A comment was received by the Agency from the WSDA, which stated that it has active registrations for specific crop-pesticide combinations, including trifluralin for use on flax and rape, and requested that EPA not revoke the tolerances for those commodities.

Agency response. While the Agency did not propose to revoke the tolerances for flax and rape, EPA did propose to revoke the tolerances for flax, straw; rape, straw; and upland cress. EPA will revoke the tolerances in 40 CFR 180.207 for trifluralin on flax, straw; and rape, straw on the grounds that the tolerances are no longer necessary. Although registered flax and rape uses exist for trifluralin, the Agency no longer sets separate tolerances on the commodities flax, straw and rape, straw. Rather, residues on those commodities are governed by the tolerances on flax and rape, respectively. The tolerance on upland cress will be addressed in a subsequent **Federal Register** document.

2-Chloro-N-isopropylacetanilide [Propachlor]

10. *Comment from Monsanto Company*. A comment was received by the Agency from the Monsanto Company, which stated that the proposed revocation of tolerances for 2-Chloro-N-isopropylacetanilide, called propachlor, on corn, forage; and corn, grain was erroneous. Monsanto has active registrations for propachlor use on corn. In a follow- up communication with EPA, Monsanto stated it would not support the propachlor tolerance on corn, sweet (K+CWHR).

11. *Comment from WSDA*. A comment was received by the Agency from the WSDA, which stated that it has active registrations for specific crop-pesticide combinations, including propachlor for use on corn, and requested that EPA not revoke the tolerances for those commodities.

Agency response. EPA acknowledges that the proposed revocation of tolerances for propachlor on corn, forage; and corn, grain was in error and these tolerances will be retained. However, there is no legal use for corn, sweet (K + CWHR) in Washington State or elsewhere in the U.S.; therefore, the Agency is revoking that corn tolerance in addition to the other tolerances that were proposed to be revoked in the **Federal Register** of February 5, 1998 (63 FR 5907). Consequently, the tolerances in 40 CFR 180.211 for propachlor on beets, sugar, roots; beets, sugar, tops; corn, sweet (K+CWHR); cottonseed; flax, seed; flax, straw; peas; peas, forage; and pumpkins will be revoked.

Simazine

12. *Comment from Curtice Burns Foods*. A comment was received by the Agency from Curtice Burns Foods requesting clarification with regard to simazine application on asparagus for the 1998 growing season.

13. *Comment from Platte Chemical Company*. A comment was received by the Agency from the Platte Chemical Company stating their concerns with regard to simazine existing stocks and grower groups.

Agency response. EPA will set a revocation date of December 31, 2000 for the simazine artichokes, asparagus, and sugarcane tolerances in 40 CFR 180.213. There are no active registrations for simazine on artichokes, asparagus, and sugarcane. However, end users holding existing stocks of simazine labeled for use on artichokes, asparagus, and sugarcane will be allowed to use such product until the time the tolerances are finally revoked (i.e., December 31, 2000), which should accomodate all existing stocks.

Naled

14. *Comment from WSDA.* A comment was received by the Agency from the WSDA requesting that the tolerance for naled on cucumbers and legumes not be revoked.

15. *Comment from the CHC.* A comment was received by the Agency from the CHC concerning the proposed tolerance revocation for naled on turnips, tops; lettuce; cucumbers; pumpkins; squash; and tomatoes. The CHC stated that revocation of the tolerance would create a barrier to Canadian exports.

16. *Comment from Amvac Chemical Corporation and Valent USA Corporation.* A comment was received by the Agency from the Valent USA Corporation, on behalf of Amvac Chemical Corporation, requesting that the tolerances for naled on cucumbers, lettuce, and tomatoes be retained for import purposes. In follow-up communication, Amvac Chemical confirmed that it will support those tolerances.

Agency response. Because of the comments/concerns received regarding the proposed revocation of naled tolerances, the Agency will not revoke the tolerances in 40 CFR 180.215 on cucumbers; legumes, forage; lettuce; pumpkins; squash, winter; tomatoes; and turnip tops at this time. The Agency will revoke the tolerances for naled on mushrooms and rice, for which no comments were received.

Atrazine

17. *Comment from WSDA.* A comment was received by the Agency from the WSDA, which stated that it has active registrations for specific crop-pesticide combinations, including atrazine for use on grass.

Agency response. Drexel Chemical Company has active uses for atrazine on orchardgrass, pastures, and rangeland. Therefore, EPA will not revoke the tolerances in 40 CFR 180.220 for atrazine on grass, range; orchardgrass; and orchardgrass, hay. The Agency will revoke the tolerances for atrazine on pineapples; pineapples, fodder; pineapples, forage; proso millet, fodder; proso millet, forage; proso millet, grain; and proso millet, straw.

Dichlobenil

18. *Comment from Uniroyal Chemical Company, Inc.* A comment was received by the Agency from Uniroyal Chemical, which stated that it has a product label use for cherries and is supporting the tolerance on sweet and tart cherries, but is not supporting the stone fruit uses, peaches, plums, prunes, and nectarines. Uniroyal requested that either the Agency establish a separate tolerance for cherries at 0.15 parts per million or reinstate the stone fruits tolerance, which covers cherries, at 0.15 parts per million.

Agency response. The Agency will not revoke the tolerance in 40 CFR 180.231 for dichlobenil on stone fruits until it reviews existing data on cherries and in addition establishes an appropriate tolerance level for cherries before revoking the tolerance on stone fruits. According to the Dichlobenil RED, the stone fruits tolerance should be revoked concomitant with the establishment of a separate tolerance for cherries, since the use of dichlobenil on all other stone fruits has been dropped, and in addition a separate tolerance should be established on cherries with a value of 0.15 for residues of dichlobenil and its metabolite 2,6- dichlorobenzamide (BAM) on cherries until new residue data submissions are evaluated by the Agency.

2,2-Dichlorovinyl dimethyl phosphate [DDVP]

19. *Comment from the CHC.* A comment was received by the Agency from the CHC concerning the proposed tolerance revocation for 2,2-Dichlorovinyl dimethyl phosphate, called dichlorvos or DDVP, on tomatoes. The CHC stated that revocation of the tolerance would create a barrier to Canadian exports.

Agency response. The Agency will not revoke the tolerance in 40 CFR 180.235 for dichlorvos (DDVP) on tomatoes at this time. The Agency will revoke the tolerances for dichlorvos (DDVP) on cucumbers; lettuce; and radishes.

Methiocarb

20. *Comment from California Citrus Quality Council.* A comment was received by the Agency from the California Quality Citrus Council (CQCC) requesting that the tolerance for 3,5-Dimethyl-4-(methylthio)phenyl methylcarbamate, called methiocarb, not be revoked on citrus fruits. The CQCC expressed concerns about potential adulteration through combination of imported juice concentrate with domestically produced concentrate.

21. *Comment from Gowan Company.* A comment was received by the Agency from Gowan Company requesting that the tolerances for 3,5-Dimethyl-4-(methylthio)phenyl methylcarbamate, called methiocarb, not be revoked on corn due to a submitted petition to register the active ingredient as a corn seed treatment.

Agency response. The Agency will revoke the tolerance in 40 CFR 180.320 for methiocarb use on citrus fruits since there is no registration of methiocarb for citrus fruits. Also, normally the Agency receives data on citrus juice, but not juice concentrate. Historically, the juice concentrate has been considered to be a commodity that will be diluted with water back to a level equivalent to the juice. Rarely do pesticide residues concentrate in the juice significantly compared to the raw fruit, causing a separate tolerance to be set on the juice.

The Agency will revoke the tolerances in 40 CFR 180.320 for methiocarb use on corn [corn, fodder; corn, forage; corn, fresh (inc. sweet K+CWHR); corn, grain, field; and corn, grain, pop] due to a variety of reasons. There are no registered uses for methiocarb on corn. While Gowan Company expressed an interest in retaining corn tolerances by submitting a comment to the proposed revocation (February 5, 1998, 63 FR 5907), Gowan has not yet clearly committed to support the tolerances with sufficient data. Gowan submitted a petition to register methiocarb for use on corn seed, in September, 1997. Gowan has not submitted the outstanding data previously required under section 3(c)(2)(B) of FIFRA in support of their proposed use of methiocarb. Instead, Gowan has proposed that the corn seed use has minor crop use status and is eligible for data waivers. The Agency denied an earlier request for such a waiver of data. Additionally, there is no enforcement analytical method which has been validated at the 0.03 ppm level of the corn tolerances, a data deficiency in the RED. There are toxicological data deficiencies as well. If Gowan decides to reestablish the corn tolerances with sufficient data in the future, it can submit a formal petition with the appropriate data and the appropriate fees.

There is no registered use for methiocarb on peaches; therefore the tolerance will be revoked.

Nitrapyrin

22. *Comments from Platte Chemical Company.* A comment was received by the Agency from the Platte Chemical Company requesting that the tolerance for nitrapyrin use on cottonseed not be revoked. In follow-up communication, Platte Chemical stated that it would not support that tolerance.

Agency response. EPA will revoke the tolerance in 40 CFR 180.350(a) for nitrapyrin use on cottonseed and will revoke the tolerance in 40 CFR 180.350(b) for nitrapyrin on strawberries.

5-ethoxy-3-(trichloromethyl)-1,2,4-thiadiazole [Etridiazole]

23. *Comments from the European Union*. Comments were received by the Agency from the European Union requesting that the tolerance for 5-ethoxy-3- (trichloromethyl)-1,2,4-thiadiazole, called etridiazole, use on strawberries not be revoked. In an earlier communication with EPA, the European Union stated that a clarification of methodology for commitment in support of tolerance retention was deserved.

Agency response. The Agency will not revoke the tolerance in 40 CFR 180.370 for etridiazole use on strawberries at this time. The Agency will revoke the tolerance for etridiazole on avocados. EPA is developing a guidance concerning submissions for import tolerance support. This guidance will be made available to interested stakeholders.

Diclofop-methyl

24. *Comments from the European Union*. Comments were received by the Agency from the European Union requesting that the tolerance for diclofop- methyl use on lentils and pea seeds (dry) not be revoked. In an earlier communication with EPA, the European Union stated that a clarification of methodology for commitment in support of tolerance retention was deserved.

Agency response. The Agency will not revoke the tolerances in 40 CFR 180.385 for diclofop-methyl use on lentils and pea seeds (dry) at this time. The Agency will revoke the tolerances for diclofop-methyl on flaxseed and soybeans. EPA is developing a guidance concerning submissions for import tolerance support. This guidance will be made available to interested stakeholders.

V. When do these actions become effective?

These actions become effective 90 days following publication of a final rule in the **Federal Register**. EPA has delayed the effectiveness of these revocations for 90 days following publication of a final rule to ensure that all affected parties receive notice of EPA's action. Consequently, the effective date is January 25, 1999, except where the date is otherwise indicated, as with simazine. For simazine, the effective date is December 31, 2000. For this particular final rule, the actions will affect uses which have been canceled for more than a year. This should ensure that commodities have cleared the channels of trade.

Any commodities listed in the regulatory text of this document that are treated with the pesticides subject to this notice, and that are in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by the Food Quality Protection Act (FQPA). Under this section, any residue of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of FDA that, (1) the residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

VI. How do the regulatory assessment requirements apply to this action?

A. Is this a ''significant regulatory action''?

No. Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action''. The Office of Management and Budget (OMB) has determined that tolerance actions, in general, are not ''significant'' unless the action involves the revocation of a tolerance that may result in a substantial adverse and material affect on the economy. In addition, this action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this action is not an economically significant regulatory action as defined by Executive Order 12866. Nonetheless, environmental health and safety risks to children are considered by the Agency when determining appropriate tolerances. Under FQPA, EPA is required to apply an additional 10-fold safety factor to risk assessments in order to ensure the protection of infants and children unless reliable data supports a different safety factor.

B. Does this action contain any reporting or recordkeeping requirements?

No. This action does not impose any information collection requirements subject to OMB review or approval pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

C. Does this action involve any ''unfunded mandates''?

No. This action does not impose any enforceable duty, or contain any ''unfunded mandates'' as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

D. Do Executive Orders 12875 and 13084 require EPA to consult with States and Indian Tribal Governments prior to taking the action in this document?

No. Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget (OMB) a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create an unfunded federal mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19,1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation

with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Does this action involve any environmental justice issues?

No. This action is not expected to have any potential impacts on minorities and low income communities. Special consideration of environmental justice issues is not required under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

F. Does this action have a potentially significant impact on a substantial number of small entities?

No. The Agency has certified that tolerance actions, including the tolerance actions in this notice, are not likely to result in a significant adverse economic impact on a substantial number of small entities. The factual basis for the Agency's determination, along with its generic certification under section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), appears at 63 FR 55565, October 16, 1998 (FRL–6035–7). This generic certification has been provided to the Chief Counsel for Advocacy of the Small Business Administration.

G. Does this action involve technical standards?

No. This tolerance action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note). Section 12(d) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

H. Are there any international trade issues raised by this action?

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. When possible, EPA seeks to harmonize U.S. tolerances with Codex MRLs. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain in a **Federal Register** document the reasons for departing from the Codex level. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual REDs. The U.S. EPA is developing a guidance concerning submissions for import tolerance support. This guidance will be made available to interested stakeholders.

I. Is this action subject to review under the Congressional Review Act?

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

List of Subjects

40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and record keeping requirements.

40 CFR Part 186

Environmental protection, Animal feeds, Pesticides and pests.

Dated: September 29, 1998.

Jack E. Housenger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

Therefore, 40 CFR parts 180 and 186 are amended to read as follows:

PART 180— [AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.103 [Amended]

b. By removing, in § 180.103, paragraph (a), the entries for ''avocados''; ''garlic''; ''leeks''; ''pimentos''; ''shallots''; and ''taro (corn)''.

§ 180.106 [Amended]

c. By removing, in § 180.106, paragraph (a), the entries for ''Bermuda grass'' and ''Bermuda grass, hay''.

§ 180.110 [Amended]

d. By removing, in § 180.110, paragraph (a), the entries for ''rhubarb'' and ''spinach''.

e. Section 180.114 is revised to read as follows:

§ 180.114 Ferbam; tolerances for residues.

(a) *General.* Tolerances for residues of the fungicide ferbam (ferric dimethyldithiocarbamate), calculated as zinc ethylenebisdithiocarbamate, in or on raw agricultural commodities are established as follows:

Commodity	Parts per million
Apples	7[1]
Apricots	7[1]
Asparagus	7[1]
Beans	7[1]
Blackberries	7[1]
Bluberries (huckleberries)	7[1]
Boysenberries	7[1]
Cabbage	7[1]
Cherries	7[1]
Citrus fruits	7[1]
Cranberries	7[1]
Cucumbers	7[1]

Commodity	Parts per million
Dewberries	7[1]
Grapes	7[1]
Guavas	7[1]
Lettuce	7[1]
Loganberries	7[1]
Mangoes	7[1]
Nectarines	7[1]
Papayas	7[1]
Peaches	7[1]
Pears	7[1]
Peas	7[1]
Raspberries	7[1]
Squash	7[1]
Tomatoes	7[1]
Youngberries	7[1]

[1] Some of these tolerances were established on the basis of data acquired at the public hearings held in 1950 (formerly § 180.101) and the remainder were established on the basis of pesticide petitions presented under the procedure specified in the amendment to the Federal Food, Drug, and Cosmetic Act by Pub. L. 518, 83d Congress (68 Stat. 511).

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

f. In § 180.121, by amending paragraph (a) by adding a heading and designating the text after the heading as paragraph (a)(1) and amending the table therein by removing the entries for ''citrus fruits''; ''sugarcane''; ''sugarcane, fodder''; and ''sugarcane, forage''; by redesignating paragraph (b) as paragraph (a)(2); and by adding and reserving with headings new paragraphs (b), (c), and (d) to read as follows:

§ 180.121 Parathion; tolerances for residues.

(a) *General.* (1) * * *

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

§ 180.145 [Amended]

g. By removing, in § 180.145, in paragraph (a)(1), the entries for ''apples''; ''apricots''; ''beans''; ''beets,tops''; ''blackberries''; ''boysenberries''; ''carrots''; ''corn''; ''dewberries''; ''kale''; ''loganberries''; ''mustard greens''; ''nectarines''; ''okra''; ''peanuts''; ''pears''; ''peas''; ''quinces''; ''radish, tops''; ''rutabaga, tops''; ''turnip, tops''; and ''youngberries''.

§ 180.170 [Removed]

h. By removing § 180.170.

i. In § 180.173, in paragraph (a), the table is revised to read as follows:

§ 180.173 Ethion; tolerances for residues.

(a) * * *

Commodity	Parts per million
Cattle, fat	2.5
Cattle, mbyp	1.0
Cattle, meat (fat basis)	2.5
Citrus fruits	2.0
Citrus pulp, dehydrated	10
Goats, fat	0.2
Goats, mbyp	0.2
Goats, meat	0.2
Hogs, fat	0.2
Hogs, mbyp	0.2
Hogs, meat	0.2
Horses, fat	0.2
Horses, mbyp	0.2
Horses, meat	0.2
Milk fat (reflecting (N) residues in milk).	0.5
Raisins	4
Sheep, fat	0.2
Sheep, mbyp	0.2
Sheep, meat	0.2
Tea, dried	10

* * * * *

j. Section 180.178 is revised to read as follows:

§ 180.178 Ethoxyquin; tolerances for residues.

(a) *General.* A tolerance is established for residues of the plant regulator ethoxyquin (1,2-dihydro-6-ethoxy-2,2,4-trimethylquinoline) from preharvest or postharvest use in or on the following commodity:

Commodity	Parts per million
Pear	3

(b) Section 18 emergency exemptions . [Reserved]

(c) *Tolerances with regional registrations* . [Reserved]

(d) *Indirect or inadvertent residues* . [Reserved]

k. In § 180.181, by designating the existing text as paragraph (a), adding a heading to newly designated paragraph (a) and revising the table; and by adding and reserving with headings paragraphs (b), (c), and (d) to read as follows:

§ 180.181 CIPC; tolerances for residues.

(a) *General.* * * *

Commodity	Parts per million
Potato (POST-H)	50

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

§ 180.183 [Amended]

l. By removing, in § 180.183, paragraph (a), the entries for ''alfalfa, fresh''; ''alfalfa, hay''; ''clover, fresh''; and ''clover, hay''.

§ 180.188 [Removed]

m. By removing § 180.188.

n. In § 180.198, by revising the section heading and the table to read as follows:

§ 180.198 Trichlorfon; tolerances for residues.

* * *

Commodity	Parts per million
Cattle, fat	0.1(N)
Cattle, mbyp	0.1(N)
Cattle, meat	0.1(N)

o. In § 180.200, by revising paragraph (a)(1) to read as follows:

§ 180.200 2,6-Dichloro-4-nitroaniline; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the fungicide 2,6- dichloro-4-nitroaniline in or on the following raw agricultural commodities. Unless otherwise specified, these tolerances prescribed in this paragraph provide for residues from preharvest application only.

Commodity	Parts per million
Apricot (PRE- and POST-H).	20
Bean, snap	20
Carrot (POST-H)	10
Celery	15
Cherry, sweet (PRE- and POST-H).	20
Cucumber	5
Endive (escarole)	10
Garlic	5
Grape	10
Lettuce	10
Nectarine (PRE- and POST-H).	20
Onion	10
Peach (PRE- and POST-H).	20
Plum (fresh prune) (PRE- and POST-H).	15
Potato	0.25
Rhubarb	10
Sweet potato (POST-H)	10
Tomato	5

* * * * *

§ 180.206 [Amended]

p. By removing, in § 180.206, paragraph (a), the entries for ''alfalfa, fresh''; ''alfalfa, hay''; ''barley, grain''; ''barley, straw''; ''Bermuda grass, straw''; ''lettuce''; ''rice''; and ''tomatoes''.

q. In § 180.207, by designating the existing text as paragraph (a), adding a heading to the newly designated paragraph (a) and amending the table therein by removing the entries for ''flax, straw''; and ''rape, straw''; and by adding and reserving with headings paragraphs (b), (c), and (d) to read as follows:

§ 180.207 Trifluralin; tolerances for residues.

(a) *General.* * * *

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

§ 180.209 [Amended]

r. By removing, in § 180.209, paragraph (a), the entry for ''citrus fruits''.

s. In § 180.211, by designating the existing text as paragraph (a), adding a heading to the newly designated paragraph (a) and amending the table therein by removing the entries for ''beets, sugar, roots''; ''beets, sugar, tops''; ''corn, sweet (K+CWHR)''; ''cottonseed''; ''flax, seed''; ''flax, straw''; ''peas (with pods, determined on peas after removing any pod present when marketed)''; peas, forage; and pumpkins; and by adding and reserving with headings paragraphs (b), (c), and (d) to read as follows:

§ 180.211 2-Chloro-N-isopropylacetanilide; tolerances for residues.

(a) *General.* * * *

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

t. In § 180.213, paragraph (a)(1) is revised to read as follows:

180.213 Simazine; tolerances for residues.

(a) *General.* (1) * * *

Commodity	Parts per million	Expiration/ revocation date
Alfalfa	15	None
Alfalfa, forage	15	None
Alfalfa, hay	15	None
Almonds	0.25	None
Almonds, hulls	0.25	None
Apples	0.25	None
Artichoke,globe	0.5	12/31/00
Asparagus	10	12/31/00
Avocados	0.25	None
Bermuda grass	15	None
Bermuda grass, forage.	15	None
Bermuda grass, hay.	15	None
Blackberries	0.25	None
Blueberries	0.25	None
Boysenberries	0.25	None
Cattle, fat	0.02(N)	None
Cattle, mbyp	0.02(N)	None
Cattle, meat	0.02(N)	None
Cherries	0.25	None
Corn, fodder	0.25	None
Corn, forage	0.25	None
Corn, fresh (inc. sweet K+CWHR).	0.25	None
Corn, grain	0.25	None
Cranberries	0.25	None
Currants	0.25	None
Dewberries	0.25	None
Eggs	0.02(N)	None
Filberts	0.25	None
Goats, fat	0.02(N)	None
Goats, mbyp	0.02(N)	None
Goats, meat	0.02(N)	None
Grapefruit	0.25	None
Grapes	0.25	None
Grass	15	None
Grass, forage	15	None
Grass, hay	15	None
Hogs, fat	0.02(N)	None
Hogs, mbyp	0.02(N)	None
Hogs, meat	0.02(N)	None
Horses, fat	0.02(N)	None
Horses, mbyp	0.02(N)	None
Horses, meat	0.02(N)	None
Lemons	0.25	None
Loganberries	0.25	None
Macadamia nuts.	0.25	None
Milk	0.02(N)	None
Olives	0.25	None
Oranges	0.25	None
Peaches	0.25	None
Pears	0.25	None
Pecans	0.1(N)	None
Plums	0.25	None
Poultry, fat	0.02(N)	None
Poultry, mbyp	0.02(N)	None
Poultry, meat	0.02(N)	None
Raspberries	0.25	None
Sheep, fat	0.02(N)	None
Sheep, mbyp	0.02(N)	None
Sheep, meat	0.02(N)	None
Strawberries	0.25	None
Sugarcane	0.25	12/31/00
Sugarcane, molasses.	1	None
Walnuts	0.2	None

u. In § 180.214, by designating the existing text as paragraph (a), adding a heading to the newly designated paragraph (a) and amending the table therein by removing the entries for ''alfalfa''; ''alfalfa, hay''; ''grass''; ''grass, hay''; ''rice''; and ''rice, straw''; and by adding and reserving with headings paragraphs (b), (c), and (d) to read as follows:

§ 180.214 Fenthion; tolerances for residues.

(a) *General.* * * *

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

v. In § 180.215, by designating the existing text as paragraphs (a)(1) and (2), adding a heading to the newly designated paragraph (a) and amending the table in paragraph (a)(1) by removing the entries for ''mushrooms''; and ''rice''; and by adding and reserving with headings paragraphs (b), (c), and (d) to read as follows:

§ 180.215 Naled; tolerances for residues.

(a) *General.* (1) * * *

(2) * * *

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

w. In § 180.217, by designating the existing text as paragraph (a) and revising, and by adding and reserving with headings paragraphs (b), (c), and (d) to read as follows:

§ 180.217 Ammoniates for [ethylenebis-(dithiocarbamato)] zinc and ethylenebis [dithiocarbamic acid] bimolecular and trimolecular cyclic anhydrosulfides and disulfides; tolerances for residues.

(a) *General.* Tolerances are established for residues of a fungicide that is a mixture of 5.2 parts by weight of ammoniates of [ethylenebis (dithiocarbamato)] zinc with 1 part by weight ethylenebis [dithiocarbamic acid] bimolecular and trimolecular cyclic anhydrosulfides and disulfides, calculated as zinc ethylenebisdithiocarbamate, in or on the following raw agricultural commodities as follows:

Commodity	Parts per million
Apple	2.0
Potato	0.5

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

x. In § 180.220, by amending paragraph (a) to add a heading and designating the existing text as (a)(1) and amending the table therein by removing the entries for ''pineapples''; ''pineapples, fodder''; and ''pineapples, forage''; by designating paragraph (b) as paragraph (a)(2) and by removing from the table the entries for ''proso millet, fodder''; ''proso millet, forage''; ''proso millet, grain''; and ''proso millet, straw''; and by adding and reserving with headings paragraphs (b), (c), and (d) to read as follows:

§ 180.220 Atrazine; tolerances for residues.

(a) *General.* (1) * * *

(b) *Section 18 emergency exemptions* . [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

§ 180.222 [Amended]

y. In § 180.222, amending paragraph (a), in the table by removing the entries for ''corn, fodder, field''; ''corn, fodder, pop''; ''corn, fodder, sweet''; ''corn, forage, field''; ''corn, forage, pop''; ''corn, forage, sweet''; and ''corn, fresh (inc. sweet K+CWHR)''.

z. In § 180.229, by designating the existing text as paragraph (a) and adding a heading, by removing in the table the entry for ''sugarcane''; and by adding and reserving with headings paragraphs (b), (c), and (d) to read as follows:

§ 180.229 Fluometuron; tolerances for residues.

(a) *General.* A tolerance is established for negligible residues of the herbicide fluometuron (1,1-dimethyl-3-(α,α,α-trifluoro-m -tolyl)urea) in or on the following raw agricultural commodity:

Commodity	Parts per million
Cotton, undelinted seed	0.1

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registration.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

aa. In § 180.231, by designating the existing text as paragraph (a) and adding a heading, and by adding and reserving with headings paragraphs (b), (c), and (d) to read as follows:

§ 180.231 Dichlobenil; tolerances for residues.

(a) *General.* * * *

b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registration.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

bb. In § 180.235, by amending paragraph (a) by adding a heading and designating the text after the heading as paragraph (a)(1) and amending the table therein by removing the entries for ''cucumbers''; ''lettuce''; and ''radishes''; by redesignating existing paragraph (b) as paragraph (a)(2); and by adding and reserving with headings new paragraphs (b), (c), and (d) to read as follows:

§ 180.235 2,2-Dichlorovinyl dimethyl phosphate; tolerances for residues.

(a) *General.* (1) * * *

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

§ 180.242 [Amended]

cc. By removing, in § 180.242, paragraph (a)(1), the entry for ''grapes''.

§ 180.254 [Amended]

dd. By removing, in § 180.254, paragraph (a), the entry for ''peanuts''.

ee. In § 180.258, by amending paragraph (a) to add a heading and amending the table therein by removing the entries for ''grapefruit''; ''oranges''; and ''potatoes''; by redesignating paragraph (b) as paragraph (c) and adding a heading; and by adding and reserving with headings paragraphs (b) and (d) to read as follows:

§ 180.258 Ametryn; tolerances for residues.

(a) *General.* * * *

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* * * *

(d) *Indirect or inadvertent residues.* [Reserved]

ff. In § 180.261, by amending paragraph (a) to add a heading and amending the table therein by removing the entry for ''tomatoes''; by redesignating paragraph (b) as paragraph (c) and adding a heading; and by adding and reserving with headings paragraphs (b) and (d) to read as follows:

§ 180.261 Phosmet; tolerances for residues.

(a) *General.* * * *

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* * * *

(d) *Indirect or inadvertent residues.* [Reserved]

gg. In § 180.262, by amending paragraph (a) to add a heading and amending the table therein by removing the entries for ''soybeans''; ''soybeans, forage''; and ''soybeans, hay''; by redesignating paragraph (b) as paragraph (c) and adding a heading; and by adding and reserving with headings paragraphs (b) and (d) to read as follows:

§ 180.262 Ethoprop; tolerances for residues.

(a) *General.* * * *

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* * * *

(d) *Indirect or inadvertent residues.* [Reserved]

hh. In § 180.297, by designating the existing text as paragraph (a), adding a heading to newly designated paragraph (a) and amending the table therein by removing the entries for ''cranberries''; ''peanuts''; ''peanuts, hay''; ''soybeans''; and ''soybeans, hay''; and by adding and reserving with headings paragraphs (b), (c), and (d) to read as follows:

§ 180.297 N-1-Naphthylphthalamic acid; tolerances for residues.

(a) *General.* * * *

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

ii. In § 180.298, by amending paragraph (a) by adding a heading and designating the text after the heading as paragraph (a)(1) and amending the table therein by removing the entries for ''clover''; ''clover, hay''; and ''potatoes''; by redesignating paragraph (b) as paragraph (a)(2); by adding and reserving with heading new paragraph (b); by adding a heading to paragraph (c); and by adding and reserving with heading new paragraph (d) to read as follows:

§ 180.298 Methidathion; tolerances for residues.

(a) *General.* (1) * * *

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* * * *

(d) *Indirect or inadvertent residues.* [Reserved]

§ 180.314 [Amended]

jj. By removing, in § 180.314, the entries for ''grass, canary, annual, seed''; and ''grass, canary, annual, straw''.

kk. By revising § 180.319 to read as follows:

§ 180.319 Interim tolerances.

While petitions for tolerances for negligible residues are pending and until action is completed on these petitions, interim tolerances are established for residues of the listed pesticide chemicals in or on the following raw agricultural commodities:

Substance	Use	Tolerance in parts per million	Raw agricultural commodity
Carbaryl (1-naphthyl N-methylcarbamate and its metabolite 1-naphthol, calculated as carbaryl..	Insecticide	0.5	Egg.
Coordination product of zinc ion and maneb	Fungicide	1.0 (Calculated as zinc ethylenebisdithiocarbamate)..	Potato.
Endothall (7-oxabicyclo-(2,2,1) heptane 2,3-dicarboxylic acid)..	Herbicide	0.2	Sugar beet.
Isopropyl carbanilate (IPC)	Herbicide	5.0	Hay of alfalfa, clover, and grass.
		2.0	Alfalfa, clover, and grass.
		0.1	Flaxseed, lentil, lettuce, pea, safflower seed, spinach, and sugar beet (roots and tops).
		0.5	Egg; milk; and the meat fat, and meat byproducts of cattle, goat, hog, horse, poultry, and sheep.
Isopropyl m-chlorocarbanilate (CIPC)	Herbicide	0.3	Spinach.
		0.05	Milk; meat, fat, and meat byproducts of cattle, hog, horse, and sheep.
Parathion (O,O-diethyl-O-p-nitrophenythiophosphate) or its methyl homolog..	Herbicide ...	0.5	Rye.
Pentachloronitrobenzene	Fungicide ...	1.0	Peanut.
	O='xl'	0.1	Beans, broccoli, Brussels sprouts, cabbage, cauliflower, garlic, pepper, potato, and tomato.

§ 180.320 [Removed]

ll. By removing § 180.320.

§ 180.330 [Amended]

mm. By removing in § 180.330, paragraph (a), the entries for ''blackberries''; ''raspberries''; ''peas''; ''peas, forage''; ''peas, hay''; and ''potatoes''.

nn. In § 180.341, by designating the existing text as paragraph (a), adding a heading to newly designated paragraph (a), by removing the phrase ''0.15 part per million (ppm) in or on'' and the entries for ''apricots''; ''caneberries (blackberries, boysenberries, dewberries, loganberries; raspberries)''; ''cantaloupes''; ''cucumbers''; ''gooseberries''; ''honeydew melons''; ''muskmelons''; ''nectarines''; ''peaches''; ''pears''; ''pumpkins''; ''summer squash''; ''watermelons''; and ''winter squash''; and by adding and reserving with headings paragraphs (b), (c), and (d) to read as follows:

§ 180.341 2,4-Dinitro-6-octylphenyl crotonate and 2,6-dinitro-4- octylphenyl crotonate; tolerances for residues.

(a) *General.* * * *

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

oo. In § 180.346, by designating the existing text as paragraph (a), adding a heading to newly designated paragraph (a) and by removing the entries for ''Brazil nuts''; ''bush nuts''; ''butternuts''; ''cashews''; ''chestnuts''; ''crabapples''; ''filberts''; ''hazelnuts''; ''hickory nuts''; ''macadamia nuts''; ''pears''; ''pecans''; ''pistachio nuts''; ''quinces''; ''rice, grain''; ''stone fruit''; and ''walnuts''; and by adding and reserving with headings paragraphs (b), (c), and (d) to read as follows:

§ 180.346 Oxadiazon; tolerances for residues.

(a) *General.* * * *

(b) *Section 18 emergency exemptions* . [Reserved]

(c) *Tolerances with regional registrations* . [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

pp. In § 180.349, by amending paragraph (a) to add a heading and designating the text after the heading as paragraph (a)(1) and amending the table therein by removing the entries for ''cocoa beans'' and ''soybeans''; by redesignating paragraph (b) as paragraph (a)(2); by adding and reserving with heading new paragraph (b); by adding a new heading to paragraph (c); and by adding and reserving with heading new paragraph (d) to read as follows:

§ 180.349 Ethyl 3-methyl-4-(methylthio)phenyl (1-methylethyl) phosphoroamidate; tolerances for residues.

(a) *General.* (1) * * *

(2) * * *

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* * * *

(d) *Indirect or inadvertent residues.* [Reserved]

qq. In § 180.350, by amending paragraph (a) by adding a heading and removing from the table therein the entry for ''cottonseed''; removing the existing text under paragraph (b) and reserving with a heading; and adding and reserving with headings paragraphs (c) and (d) to read as follows:

§ 180.350 Nitrapyrin; tolerances for residues.

a) *General.* * * *

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

§ 180.358 [Removed]

rr. By removing § 180.358.

§ 180.366 [Removed]

ss. By removing § 180.366.

tt. In § 180.370, by designating the existing text as paragraph (a), adding a heading to newly desginated paragraph (a) and amending the table therein by removing the entry for ''avocados''; and by adding and reserving with headings paragraphs (b), (c), and (d) to read as follows:

§ 180.370 5-Ethoxy-3-(trichloromethyl)-1,2,4-thiadiazole; tolerances for residues.

(a) *General.* * * *

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

§ 180.374 [Removed]

uu. By removing § 180.374.

vv. In § 180.385, by designating the existing text as paragraph (a), adding a heading to newly designated paragraph (a) and amending the table therein by removing the entries for ''flaxseed'' and ''soybeans''; and by adding and reserving with headings paragraphs (b), (c), and (d) to read as follows:

§ 180.385 Diclofop-methyl; tolerances for residues.

(a) *General.* * * *

(b) Section 18 emergency exemptions . [Reserved]

(c) *Tolerances with regional registrations* . [Reserved]

(d) *Indirect or inadvertent residues* . [Reserved]

§ 180.386 [Removed]

ww. By removing § 180.386.

§ 180.387 [Removed]

xx. By removing § 180.387.

yy. In § 180.410, by amending paragraph (a) to add a heading and in the table, by removing the entries for ''almonds''; ''almond, hulls''; ''apricots''; ''peaches''; and ''plums (fresh prunes)''; by redesignating paragraph (b) as paragraph (c) and adding a heading to newly designated paragraph (c); and by adding and reserving with headings paragraphs (b) and (d) to read as follows:

§ 180.410 1-(4-Chlorophenoxy)-3,3-dimethyl-1(1H-1,2,4-triazol-1-yl)-2-butanone; tolerances for residues.

(a) *General.* * * *

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* * * *

(d) *Indirect or inadvertent residues.* [Reserved]

zz. In § 180.416, by designating the existing text as paragraph (a) and adding a heading, by removing in the table the entries for ''cattle, fat'', ''cattle, meat'', ''cattle, mbyp'', ''eggs'', ''hogs, fat'', ''hogs, meat'', ''hogs, mbyp'', horses, fat'', ''horses, meat'', ''horses, mbyp'', ''milk'', ''poultry, fat'', ''poultry, meat'', ''poultry, mbyp'', ''sheep, fat'', ''sheep, meat'', and ''sheep, mbyp'', and by adding and reserving with headings paragraphs (b), (c), and (d) to read as follows:

§ 180.416 Ethalfluralin; tolerances for residues.

(a) *General.* * * *

b) *Section 18 emergency exemptions* . [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

PART 186—[AMENDED]

2.In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

§ 186.2325 [Removed]

b. By removing § 186.2325.

§ 186.3000 [Removed]

c. By removing § 186.3000.

[FR Doc. 98–28485 Filed 10–23–98; 8:45 am]

BILLING CODE 6560–50–F

Proposed Rules

Federal Register
Vol. 63, No. 206
Monday, October 26, 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 Safety and Inspection Service

9 CFR Part 381

[Docket No. 97–054P]

RIN 0583–AC28

Retained Water in Raw Meat and Poultry Products; Poultry Chilling Performance Standards

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Correction to proposed rule.

SUMMARY: This document contains corrections to the proposed rule (Docket No. 97–054P) which was published Friday, September 11, 1998 (63 FR 48961). The proposed rule would limit the amount of water retained by raw, single-ingredient, meat and poultry products as a result of post-evisceration processing, such as carcass washing and chilling. The proposed rule also would revise the poultry chilling regulations to remove ''command-and-control'' features and make them consistent with current technological capabilities, good manufacturing practices, and the pathogen reduction/hazard analysis and critical control points (PR/HACCP) regulations.

DATES: Comments must be received on or before December 10, 1998.

ADDRESSES: Submit one original and one copy of written comments to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, 300 12th Street, SW., Washington, DC 20250–3700. Please refer to docket number 97–054P in your comments. All comments submitted in response to this proposal, as well as research and background information used by FSIS in developing this document, will be available for public inspection in the Docket Clerk's Office between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Patricia F. Stolfa, Assistant Deputy Administrator, Office of Policy, Program Development, and Evaluation, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington DC 20250–3700: (202) 205–0699.

SUPPLEMENTARY INFORMATION:

Background

The proposed rule that is the subject of these corrections would limit the amount of water retained by raw, single ingredient, meat and poultry products as a result of post-evisceration processing, such as carcass washing and chilling. Meat and poultry carcasses and parts would not be permitted to contain water resulting from post-evisceration processing unless the establishment demonstrates that water retention is necessary to meet applicable food safety requirements, such as pathogen reduction performance standards. In addition, the establishment would have to disclose on the product label the maximum percentage of retained water that could be in the product.

FSIS is also proposing to revise the poultry chilling regulations to improve consistency with the Pathogen Reduction/Hazard Analysis and Critical Control Points (PR/HACCP) regulations, eliminate ''command-and-control'' features, and reflect current technological capabilities and good manufacturing practices.

Need for Correction

As published, the proposed rule contained errors in the regulatory text that could prove to be misleading because they reflect unintended changes in the current regulations and are inconsistent with the preamble explanation.

Correction of Publication

Accordingly, the publication on September 11, 1998, of the proposed rule (Docket No. 97–054P), which was the subject of FR Docket 98–24309, is corrected as follows:

§ 381.65 [Corrected]

Paragraph 1. On page 48968, in the third column, in § 381.65, after paragraph (e)(2), paragraph (f) is added to read:

''(f) Poultry carcasses contaminated with visible fecal material shall be prevented from entering the chilling tank.''

§ 381.66 [Corrected]

Paragraph 1. On page 48969, in the first column, paragraph (c)(3) is revised to read as follows:

''(c)(3) Previously chilled poultry carcasses and major portions shall be maintained constantly at 40 °F or below until removed from the vats or tanks for immediate packaging. Such products may be removed from the vats or tanks prior to being cooled to 40 °F or below, for freezing or cooling in the official establishment. Such products shall not be packed until after they have been chilled to 40 °F or below, except when the packaging will be followed immediately by freezing at the official establishment.''

* * * * *

Dated: October 20, 1998.

Thomas J. Billy,

Administrator.

[FR Doc. 98–28543 Filed 10–23–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–232–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400, 757, 767, and 777 Series Airplanes Equipped With Allied Signal RIA–35B Instrument Landing System (ILS) Receivers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 747–400, 757, 767, and 777 series airplanes, that currently requires a revision to the Airplane Flight Manual (AFM) to prohibit certain types of approaches. That action also requires repetitive inspections to detect certain faults of all RIA–35B ILS receivers, and replacement of discrepant ILS receivers with new, serviceable, or modified units; or, alternatively, an additional revision to the AFM and installation of a placard to prohibit certain operations. That AD was prompted by a report of errors in the

glide slope deviation provided by an ILS receiver. This action would require accomplishment of the previously optional terminating action. The actions specified by the proposed AD are intended to prevent erroneous localizer deviation provided by faulty ILS receivers, which could result in a landing outside the lateral boundary of the runway.

DATES: Comments must be received by December 10, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–232–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 AlliedSignal Aerospace, Technical Publications, Dept. 65–70, P.O. Box 52170, Phoenix, Arizona 85072–2170. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Jay Yi, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1013; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–232–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–232–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On June 29, 1998, the FAA issued AD 98–14–10, amendment 39–10643 (63 FR 36549, July 7, 1998), applicable to certain Boeing Model 747–400, 757, 767, and 777 series airplanes, to require a revision to the Airplane Flight Manual (AFM) to prohibit certain types of approaches if only one instrument landing system (ILS) receiver is operational. That action also requires repetitive inspections to detect certain faults of all RIA–35B ILS receivers, and replacement of discrepant ILS receivers with new, serviceable, or modified units; or, alternatively, an additional revision to the AFM and installation of a placard to prohibit certain operations. That action also provides for an optional terminating action for the AFM revisions and repetitive inspections. That action was prompted by a report indicating that errors were detected in the glide slope deviation provided by an ILS receiver. The requirements of that AD are intended to detect and correct faulty ILS receivers, and to ensure that the flightcrew is advised of the potential hazard of performing ILS approaches using a localizer deviation from a faulty ILS receiver and also advised of the procedures necessary to address that hazard. Erroneous localizer deviation could result in a landing outside the lateral boundary of the runway.

Actions Since Issuance of Previous Rule

When AD 98–14–10 was issued, it contained a provision for the optional replacement of all existing RIA–35B ILS receivers with modified units, which, if accomplished, would constitute terminating action for the AFM revisions and repetitive inspections required by that AD. In the preamble to AD 98–14–10, the FAA indicated that the actions required by that AD were considered ''interim action'' and that further rulemaking action was being considered to require the replacement of all existing RIA–35B ILS receivers with modified parts. The FAA now has determined that further rulemaking action is indeed necessary, and this proposed AD follows from that determination.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 98–14–10, amendment 39–10643, to continue to require a revision to the AFM to prohibit certain types of approaches if only one ILS receiver is operational. This proposed AD also would continue to require repetitive inspections to detect certain faults of all RIA–35B ILS receivers, and replacement of discrepant ILS receivers with new, serviceable, or modified units; or, alternatively, an additional revision to the AFM and installation of a placard to prohibit certain operations. This proposed AD also would require replacement of all ILS receivers, part number 066–50006–0101, with modified ILS receivers, which would constitute terminating action for the repetitive inspections and AFM revisions described previously.

Cost Impact

There are approximately 74 airplanes of the affected design in the worldwide fleet. The FAA estimates that 74 airplanes of U.S. registry would be affected by this proposed AD.

The AFM revision to prohibit certain types of approaches that currently is required by AD 98–14–10, and retained in this proposed AD, takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required AFM revision on U.S. operators is estimated to be $4,440, or $60 per airplane.

In lieu of the AFM revision and placard installation to prohibit certain types of operations, the visual inspection that currently is provided in AD 98–14–10 takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection on U.S. operators is estimated to be $4,440, or $60 per airplane, per inspection cycle.

In lieu of the visual inspection, the AFM revision and placard installation that currently is provided in AD 98–14–10 takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based

on these figures, the cost impact of the AFM revision and placard installation on U.S. operators is estimated to be $4,440, or $60 per airplane.

The new replacement that is proposed in this AD action would take approximately 3 work hours per airplane (1 work hour per receiver, 3 receivers per airplane) to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $235 per airplane ($78.33 per receiver). Based on these figures, the cost impact of the replacement proposed by this AD on U.S. operators is estimated to be $30,710, or $415 per airplane.

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

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 removing amendment 39–10643 (63 FR 36549, July 7, 1998), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 98–NM–232–AD. Supersedes AD 98–14–10, amendment 39–10643.

Applicability: Model 747–400, 757, 767, and 777 series airplanes; equipped with AlliedSignal RIA–35B Instrument Landing System (ILS) receivers, part number (P/N) 066–50006–0101; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent erroneous localizer deviation provided by faulty ILS receivers, which could result in a landing outside the lateral boundary of the runway, accomplish the following:

Restatement of the Requirements of AD 98–14–10

(a) Within 10 days after July 22, 1998 (the effective date of AD 98–14–10, amendment 39–10643), revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD into the AFM.

''Any Instrument Landing System (ILS) or Localizer approach with only one operative AlliedSignal ILS receiver, P/N 066–50006–0101, installed is prohibited.''

Note 2: On Model 747–400 and 777 series airplanes, the existence of only one operative ILS receiver is indicated by the Engine Indication and Crew Alerting System advisory message, ''SNGL SOURCE ILS.'' On Model 757 and 767 series airplanes, failure of an ILS receiver is indicated by an ILS flag on the display of the Electronic Flight Instrument System when approach mode is selected.

(b) Within 30 days after July 22, 1998, accomplish the requirements of either paragraph (b)(1) or (b)(2) of this AD.

(1) Perform a visual inspection of the 64 flight legs of the internal fault memory of all AlliedSignal RIA–35B ILS receivers, P/N 066–50006–0101, for fault codes ''Nl'' (glide slope antialias fault) or ''Nm'' (localizer antialias fault). Repeat the inspection thereafter at intervals not to exceed 64 flight cycles. If any fault code ''Nl'' or ''Nm'' is found, prior to further flight, replace the existing ILS receiver with a new or serviceable ILS receiver having the same P/N; or with an ILS receiver that has been modified to P/N 066–50006–1101 in accordance with AlliedSignal Electronic and Avionics Systems Service Bulletin M–4426 (RIA–35B–34–6), Revision 3, dated May 1998. Installation of an ILS receiver that has been modified (and the P/N converted) in accordance with the service bulletin constitutes terminating action for the inspection requirement of paragraph (b)(1) of this AD for that part.

(2) Accomplish the actions required by paragraphs (b)(2)(i) and (b)(2)(ii) of this AD.

(i) Revise the Limitations Section of the FAA-approved AFM to include the following statement. This may be accomplished by inserting a copy of this AD into the AFM. ''Category II and III operations are prohibited with AlliedSignal ILS receiver P/N 066–50006–0101 installed.''

(ii) Install a placard on the forward instrument panel of the cockpit in clear view of the pilots, which states: ''Category II and III operations are prohibited.''

(c) As of July 22, 1998, no person shall install on any airplane an RIA–35B ILS receiver, P/N 066–50006–0101, that has been found to be discrepant (that is, on which fault codes ''Nl'' or ''Nm'' were found during an inspection of the internal fault memory) unless the discrepancy has been corrected by modifying the ILS receiver in accordance with AlliedSignal Electronic and Avionics Systems Service Bulletin M–4426 (RIA–35B–34–6), Revision 3, dated May 1998.

New Requirements of This AD

(d) Within 6 months after the effective date of this AD, replace all existing RIA–35B ILS receivers, P/N 066–50006–0101, with RIA–35B ILS receivers that have been modified in accordance with AlliedSignal Electronic and Avionics Systems Service Bulletin M–4426 (RIA–35B–34–6), Revision 3, dated May 1998; and that have had their P/N's converted to 066–50006–1101. Such replacement constitutes terminating action for the requirements of this AD. After the replacement has been accomplished, the AFM limitations required by paragraphs (a) and (b)(2)(i) of this AD may be removed from the AFM, and the placard required by (b)(2)(ii) may be removed from the cockpit.

Note 3: Modification of all AlliedSignal RIA–35B ILS receivers, P/N 066–50006–0101, prior to July 22, 1998, in accordance with Allied Signal Electronic and Avionics Systems Service Bulletin M–4426 (RIA–35B–

34–6), dated December 1997; Revision 1, dated January 1998; or Revision 2, dated April 1998; is considered acceptable for compliance with the applicable action specified in this amendment.

(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, Seattle Aircraft Certification Office (ACO), 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, Seattle ACO.

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

(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.

Issued in Renton, Washington, on October 19, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 3, 341, 342, 343, 346, 357, 362 and 385

[Docket No. RM99–1–000]

Revisions to Oil Pipeline Regulations

October 20, 1998.

AGENCY: Federal Energy Regulatory Commission. DOE.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to revise its regulations governing oil pipelines. The goals of these proposed revisions are to clarify the Commission's regulations and bring them up to date.

DATES: Comments are due November 25, 1998.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Travis R. Smith, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–0696.

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

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

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

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, RVJ International, Inc. RVJ International, Inc., is located in the Public Reference Room at 888 First Street, NE., Washington, DC 20426.

The Federal Energy Regulatory Commission (Commission) has reviewed its regulations governing oil pipelines and has determined that various provisions are either outdated or in conflict with other oil pipeline regulations. Accordingly, the Commission is proposing to revise 18 CFR parts 341, 342, 343, and 346 to remove these provisions. The Commission is also proposing to revise 18 CFR parts 3, 357, 362, and 385. The goals of these proposed revisions are to clarify the Commission's regulations and bring them up to date.

I. Background

Jurisdiction over oil pipelines, as it relates to the establishment of rates or charges for the transportation of oil by pipeline or to the establishment of valuations for pipelines, was transferred from the Interstate Commerce Commission (ICC) to the Commission pursuant to sections 306 and 402 of the Department of Energy Organization Act (DOE Act).[1] At the time the DOE Act transferred jurisdiction over oil pipeline rates to the Commission, the regulations governing oil pipelines were located in the ICC's regulations at Title 49 of the Code of Federal Regulations (CFR). Initially, the Commission ordered that the regulations concerning oil pipelines remain in effect until modified by the Commission. In Order No. 119,[2] the Commission started transferring some of the ICC's oil pipeline regulations from Title 49 of the Code of Federal Regulations to the Commission's regulations in Title 18. parts 357[3] and 362[4] were among some of the Commission's current regulations that were adopted from this initial transfer. In Order No. 225,[5] the Commission adopted the ICC's rules pertaining to paper hearings called the ''modified procedure,'' currently codified at 18 CFR sections 385.1404 through 385.1414, and to *ex parte* communications, presently located at 18 CFR 385.1415, from 49 CFR part 1100. Also, pursuant to Order No. 225, the Commission moved all of its Rules of Practice and Procedure from 18 CFR part 1 to 18 CFR part 385. Notwithstanding some limited revisions, most of the provisions in parts 357, 362, and 385 are the same as they were in Title 49.

The Energy Policy Act of 1992 (Act of 1992) required the Commission to promulgate new regulations to provide a simplified and generally applicable ratemaking methodology for oil pipelines, and to streamline its procedures in oil pipeline proceedings.[6]

[1] Department of Energy Organization Act, 42 U.S.C. 7155 and 7172(b) (1988).

[2] Regulation of Interstate Oil Pipelines, Order No. 119, 46 FR 9043 (January 28, 1981), FERC Stats. & Regs. (Regulations Preambles, 1977–1981) ¶ 30,226 (May 5, 1981).

[3] Part 357 addresses the annual special or periodic reports that carriers subject to Part I of the Interstate Commerce Act are required to file.

[4] Part 362 sets forth the various requirements for valuation.

[5] Revisions of Rules of Practice and Procedure to Expedite Trial-Type Hearings, Order No. 225, 47 FR 19014 (May 3, 1982), FERC Stats. & Regs. (Regulations Preambles, 1982-1985) ¶ 30,358 (January 18, 1983).

[6] The Energy Policy Act of 1992 (Act of 1992) contemplated two rulemakings—one on ratemaking

Continued

Pursuant to Congress' directive in the Act of 1992, the Commission issued Order No. 561[7] and two companion rulemakings, Order Nos. 571[8] and 572.[9] In Order No. 561, the Commission established a simplified and generally applicable way for oil pipelines to change their rates and also provided alternatives to this methodology. In Order No. 571, the Commission addressed a cost-of-service rate filing alternative for oil pipelines. In Order No. 572, the Commission addressed market-based rates for oil pipelines. These rulemakings also included new rate filing requirements and procedural reforms to reflect the new ratemaking methodologies, and streamlined the Commission's internal processes for oil pipelines.

At the time the Commission adopted changes to its ratemaking methodologies and procedural requirements, it intended that its new regulations would supersede existing procedural rules that were in conflict and do away with those that were no longer necessary, such as those describing the modified procedure. The final rules, however, did not take steps to remove these outdated regulations. As a result, the current Commission regulations governing oil pipelines include both recent provisions adopted or modified pursuant to the Act of 1992 and conflicting regulations adopted from the ICC which have been superseded and thus are inconsistent. Consequently, the Commission is proposing to revise 18 CFR parts 341, 342, 343, and 346 to remove outdated and conflicting regulations. The Commission is also proposing to revise 18 CFR parts 3, 357, 362, and 385 to conform them to the other proposed changes.

II. Public Reporting Burden

The Commission believes that there will be no impact on the public reporting burden from the elimination of outdated and nonessential regulations, and the related modification of other regulations. Because the regulations being removed are outdated, they effectively ceased being a reporting burden years ago. As for the regulations being modified, they are simply clarifying, not augmenting, reporting requirements.

III. Discussion

A. Part 341

Part 341 relates to the requirements for preparing, filing, and withdrawing oil pipeline tariffs. Section 341.6(3) pertains to the rules for partial adoption by a carrier of another carrier's tariffs. The Commission proposes to amend this section by removing duplicative language from the provision which now requires a carrier to state the effective date of an adoption notice twice in a tariff supplement required to be filed with the Commission.

Section 341.7 addresses the requirements for concurrences. The Commission is proposing a modification of this section to specify the information that should be included in letters of transmittal accompanying the filing of a tariff publication containing a joint carrier. Under the proposed revision, letters of transmittal would be required to include the address, phone number, and contact for each joint carrier listed in the tariff publication. This is information that the Commission, as a routine matter, has required carriers to submit. Including it as part of the regulations will inform carriers that such information must be included with their filings and make it unnecessary for carriers to supplement their filings later.

B. Part 342

Part 342 pertains to the methods that may be used to establish initial rates, or change existing rates. To be more specific, § 342.3 discusses rate changes under the indexing methodology. Section 342.3(b)(1) currently provides:

> Carriers must specify in their letters of transmittal required in § 341.2(c) of this chapter the rate schedule to be changed, the proposed new rate, the prior rate, and the applicable ceiling level for the movement. No other rate information is required to accompany the proposed rate change.

Under the proposed revisions in this Notice of Proposed Rulemaking (NOPR), this section would require carriers filing for rate changes to also include the prior rate ceiling level, in addition to the other information specified, in their letters of transmittal. It is the Commission's position that including the prior ceiling level will provide necessary information for the calculation of the index ceiling levels.

Section 342.3(b)(2) addresses the information required to be filed by carriers with their initial rate changes. It currently reads as follows:

> On March 31, 1995, or concurrently with its first indexed rate change filing made on or after January 1, 1995, whichever first occurs, carriers must file a verified copy of a schedule for calendar years 1993 and 1994 containing the information required by page 700 of the 1995 edition of FERC Form No. 6. If actual data are not available for calendar year 1994 when the rate change filing is made, the information for calendar year 1994 must be comprised of the most recently available actual data annualized for the year 1994. A schedule containing the information comprised of actual data for calendar year 1994 must be filed not later than March 31, 1995. Thereafter, carriers must file page 700 as a part of their annual Form No. 6 filing.

This section directs carriers to file schedules containing the information required by page 700 of the 1995 edition of FERC Form No. 6. on March 31, 1995, or concomitantly with its first indexed rate change filing made on or after January 1, 1995, whichever occurs first. Because the one-time need for the requirements of this section has passed, the Commission proposes to delete it in its entirety.

Section 342.3(d)(3) states that a carrier must compute its ceiling level each index year without regard to the rates filed pursuant to this section. In *Kaneb* and subsequent proceedings,[10] the Commission explained that because there are numerous pipelines that file rates measured in hundredths of a cent, all ceiling level calculations for all pipelines should be rounded[11] to the nearest hundredth of a cent, *i.e.*, to two decimal places. As this explanation applies to all calculations by all carriers under § 342.3, the Commission proposes to add this explanation to the regulations to assist carriers in making accurate and complete filings.

C. Part 343

Part 343 discusses procedural matters related to oil pipeline proceedings under part 342. Section 343.2 describes

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methodology and another on streamlined procedures—and established separate deadlines for their completion. Energy Policy Act of 1992 Pub. L. 102–46, Title XVIII, 1801 to 1804, 106 Stat. 2776, 3010–3011 (codified as 42 U.S.C.A. 7172 note (West Supp. 1995)).

[7] Revisions to Oil Pipeline Regulations pursuant to Energy Policy Act of 1992, Order No. 561, 58 FR 58753 (November 4, 1993), FERC Stats. & Regs. (Regulations Preambles, 1991–1996) ¶ 30,985 (October 22, 1993), *order on rehearing and clarification*, Order No. 561–A, 59 FR 40243 (August 8, 1994) FERC Stats. & Regs. (Regulations Preambles, 1991–1996) ¶ 31,000 (July 28, 1994).

[8] Cost-of-Service Reporting and Filing Requirements for Oil Pipelines, Order No. 571, 59 FR 59137 (November 16, 1994) FERC Stats. & Regs. (Regulations Preambles, 1991–1996) ¶ 31,006 (October 28, 1994), *order on hearing and clarification*, Order No. 571–A, 60 FR 356 (January 4, 1995) FERC Stats. & Regs. (Regulations Preambles, 1991–1996) ¶ 31,012 (December 28, 1994).

[9] Market-Based Ratemaking for Oil Pipelines, Order No. 572, 59 FR 59148 (November 16, 1994), FERC Stats. & Regs. (Regulations Preambles, 1991–1996) ¶ 31,007 (October 28, 1994), *order denying rehearing*, Order No. 572–A, 69 FERC ¶ 61,412 (December 28, 1994).

[10] *Kaneb Pipeline Operating Partnership, L.P.*, 71 FERC ¶ 61,409 (1995).

[11] If the third decimal place number is five or more, the second decimal number should be rounded up; if the third decimal place number is four or less, the second decimal place number should be rounded down. *Kaneb Pipeline.* 71 FERC ¶ 61,409 (1995), at p. 62,617. n.6.

the requirements for filing interventions, protests, and complaints. The Commission is proposing to correct § 343.2(c)(4) so that it references paragraphs (c)(1), (2), or (3) within the section, rather than paragraphs (b)(1), (2), or (3) as at present.

D. Part 346

Part 346 sets forth the filing requirements for oil pipelines that seek to establish cost-of-service rates as permitted under part 342. Section 346.2(c)(7) states in part: ''If the presently effective rates are not at the maximum ceiling rate established under § 342.4(a) of this chapter, then gross revenues must also be computed and set forth as if the ceiling rates were effective for the 12 month period.'' Under the proposed revisions in this NOPR, § 346.2(c)(7) would be revised to correctly reference § 342.3, which is the section that sets forth the indexing methodology, rather than § 342.4(a), which describes cost-of-service rates.

E. Part 357

Part 357 concerns the annual special or periodic reports that carriers subject to Part I of the Interstate Commerce Act are required to file. § 357.3(a), (b), and (c) discuss the filing requirements for FERC Form No. 73. In Order No. 561, the Commission stated that it would be the oil pipeline carriers' responsibility in the future to perform depreciation studies to establish revised depreciation rates for oil pipelines. The specific requirements for such studies were adopted as part 347 of the Commission's regulations in Order No. 571. Section 347.1(e)(5)(x) provides that a carrier must submit a Service Life Data Form (FERC Form No. 73) if the proposed depreciation rate adjustment is based on the remaining physical life of the properties. The Commission is proposing that § 357.3(a) and (b), which address who must file FERC Form No. 73 and when the form must be submitted, be revised to include filings under § 347.1(e)(5)(x). The Commission also proposes to revise § 357.3(c) to update its mailing address.

F. Part 362

Part 362 sets forth the various requirements for valuation. Part 362 came into being as a result of Order No. 119,[12] which transferred the ICC's valuation section, in addition to several other sections pertaining to oil pipelines, from its regulations located at Title 49 of the Code of Federal Regulations to the Commission's regulations at Title 18. In Opinion No. 154,[13] the Commission intimated that it was considering abandoning the traditional ICC valuation formula; however, the Commission ultimately retained the valuation methodology. To the contrary, in Opinion No. 154–B,[14] the Commission adopted a methodology that is currently used in many oil pipeline rate cases. This new methodology is predicated on a trended original cost (TOC) rate base and it does not follow the ICC's historic valuation rate base. Because Opinion No. 154–B rejects the valuation rate base methodology and thus eliminates the need for any valuation of oil pipelines, the filing of valuation reports as now required by part 362 is no longer necessary. As a result, the Commission is proposing to remove part 362 in its entirety from its regulations. Order No. 561 removed parts 360 and 361 pertaining to reporting of data for valuation purposes. The proposal here would complete the task of removing unnecessary valuation regulations.

G. Part 385

Part 385 governs the Commission's rules of practice and procedure. Section 385.101(b)(3) excepts ICC rules from Part 385 in cases where regulations in the Commission's Rules of Practice and Procedure are inconsistent with ICC rules that were not replaced by a Commission rule or order. Because the Commission has promulgated and codified its own rules governing oil pipelines, this section has become unnecessary; therefore, the Commission proposes to remove this section from its Rules of Practice and Procedure. Section 385.102(a), which defines ''decisional authority'' refers to authority or responsibility under ''49 CFR Chapter X.'' As this is a reference to ICC regulations which have been replaced, the Commission proposes the removal of this section.

Section 385.1403 discusses the filing requirements for protests to tariff filings. This section is inconsistent with, and has been superseded by, § 343.3, which was adopted in Order No. 561. Accordingly, the Commission proposes to delete § 385.1403 from the Commission's rules of practice and procedure.

Penultimately, §§ 385.1405 through 385.1414 set out the modified procedure rules for oil pipeline proceedings. Specifically, the Commission can order a proceeding to be heard under a modified procedure if it appears that substantially all important issues of fact may be resolved by means of written materials without an oral hearing. These rules were adopted from the ICC's procedural regulations, 49 CFR part 1100, pursuant to Order No. 225.[15] The regulations concerning the modified procedure have been superseded by, and are in conflict with, procedures and filing requirements in parts 342, 343, 346, and 347 adopted in Order Nos. 561, 571, and 572. The Commission will continue to use paper hearing procedures in individual cases where warranted. These procedures, however, are not used frequently enough to warrant continuing to include them in the regulations. Consequently, the Commission proposes to remove these regulations from the rules of practice and procedure. Since the Commission is proposing to remove the modified procedure rules, this NOPR is also proposing to remove § 385.101(b)(4)(i) because it excepts §§ 385.1404 through 1414 from Part 385.

Finally, some of the Commission's regulations still contain references to the now defunct Oil Pipeline Board. Section 385.102, the definitions section, contains Oil Pipeline Board references in paragraphs (a) and (e)(2). Part 3 pertains to organization, operation, information and requests. Section 385.502(a)(3), rules concerning the initiation of a hearing, contains an Oil Pipeline Board reference. Section 385.1902, rules for appealing staff action, also makes reference to the Oil Pipeline Board. Due to the fact that the Commission abolished the Oil Pipeline Board in Order No. 561, the Commission is proposing to revise the foregoing sections by removing all references to the Oil Pipeline Board.

IV. Environmental Analysis

The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[16] The Commission has categorically excluded certain actions

[12] Regulation of Interstate Oil Pipelines, Order No. 119, 46 FR 9043 (January 28, 1981), FERC Stats. & Regs. (Regulations Preambles, 1977–1981) ¶ 30,226 (May 5, 1981).

[13] *Farmers Union Central Exchange, Inc.* v. *FERC,* 734 F.2d 1486 (D.C. Cir. 1984), *cert. denied sub nom., Williams Pipeline Company* v. *Farmers Union Central Exchange, Inc.,* 105 S.Ct. 507 (1984). The Commissions's opinion appears at 21 FERC ¶ 61,260 (1982), *rehearing denied,* 21 FERC ¶ 61,086 (1983).

[14] *Williams Pipeline Company,* 31 FERC ¶ 61,377 (1985).

[15] Revisions of Rules of Practice and Procedure to Expedite Trial-Type Hearings, Order No. 225, 47 FR 19014 (May 3, 1982), FERC Stats. & Regs. (Regulations Preambles, 1982-1985) ▌ 30,358 (January 18, 1983).

[16] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (December 17, 1987), FERC Stats. & Regs. (Regulations Preambles, 1986–1990) ¶ 30,783 (1987).

from these requirements as not having a significant effect on the human environment.[17] The action proposed here is procedural in nature and therefore falls within the categorical exclusions provided in the Commission's regulations.[18] Therefore, neither an Environmental Impact Statement nor an Environmental Assessment is necessary and will not be prepared in this rulemaking.

V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act[19] generally requires the Commission to describe the impact that a proposed rule would have on small entities or to certify that the rule will not have a significant economic impact on a substantial number of small entities. The Commission certifies that promulgating this rule does not represent a major federal action having a significant economic impact on a substantial number of small entities. Therefore, no regulatory flexibility analysis is required.

VI. Information Collection Statement

Office of Management and Budget (OMB) regulations[20] require that OMB approve certain information collection requirements imposed by agency rule. Since this rule does not impose new regulations and has no impact on current information collections, there is no need to obtain OMB approval as to the deletion and modification of these regulations. Nevertheless, the Commission is submitting a copy of the proposed rule to the OMB for informational purposes. Interested persons may obtain information on these reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426 (Attention Michael Miller, Office of the Chief Information Officer, (202) 208–1415). Comments on the requirements of this rule can be sent to the Office of Information and Regulatory Affairs of OMB (Attention: Desk Officer for Federal Energy Regulatory Commission), 725 17th Street, NW, Washington, DC 20503, Phone: (202) 395–3087 Fax: (202) 395–5167.

VII. Comment Procedures

Copies of this notice of proposed rulemaking can be obtained from the Public Reference and Files Maintenance Branch, Room 2–A, 888 First Street, NE, Washington, DC 20426. Any person desiring to file comments should submit an original and fourteen (14) copies of such comments to the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, not later than November 25, 1998.

All written comments will be placed in the Commission's public files and will be available for public inspection in the Commission's Public Reference Room at 888 First Street, NE, Washington, DC 20426, during regular business hours.

List of Subjects

18 CFR Part 3

Organization and functions (Government agencies).

18 CFR Part 341

Maritime carriers, Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 342

Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 343

Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 346

Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 357

Pipelines, Reporting and recordkeeping requirements, Uniform System of Accounts.

18 CFR Part 362

Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 385

Administrative practice and procedure, Electric power, Penalties, Pipelines, Reporting and recordkeeping requirements.

By direction of the Commission.

David P. Boergers,

Secretary.

In consideration of the foregoing, the Commission proposes to amend parts 3, 341, 342, 343, 346, 357, 362, and 385, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

PART 3—ORGANIZATION; OPERATION; INFORMATION AND REQUESTS

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

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142 (1978); Administrative Procedure Act, 5 U.S.C. 551–557 (1982); Natural Gas Act, 15 U.S.C. 717–717z (1982); Federal Power Act, 16 U.S.C. 791a-828c (1982); Natural Gas Policy Act, 15 U.S.C. 3301–3432 (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982); Interstate Commerce Act, 49 U.S.C. 1–27 (1976); Freedom of Information Act, 5 U.S.C. 552 (1982) as amended by Freedom of Information Reform Act of 1986.

§ 3.4 [Removed and Reserved]

2. Section 3.4 is removed and reserved.

PART 341—OIL PIPELINE TARIFFS: OIL PIPELINE COMPANIES SUBJECT TO SECTION 6 OF THE INTERSTATE COMMERCE ACT

3. The authority citation for Part 341 continues to read as follows:

Authority: 42 U.S.C. 7101–7352; 49 U.S.C. 1–27.

4. Section 341.6 is amended by revising paragraph (d)(3) to read as follows:

§ 341.6 Adoption Rule.

* * * * *

(d) * * *

(3) The former owner must immediately file a consecutively numbered supplement to each of its tariffs covered by the adoption notice, reading as follows:

Effective [date of adoption notice] this tariff became the tariff of [legal name of adopting carrier] for transportation movements [identify origin and destination points], as per its adoption notice FERC No. [number].

* * * * *

5. Section 341.7 is revised to read as follows:

§ 341.7 Concurrences.

Concurrences must be maintained at carriers' offices and produced upon request. Cancellations or changes to concurrences affecting FERC Tariffs must be shown in those tariffs. Carriers must provide to the Commission, in the letter of transmittal accompanying the filing of a tariff publication containing a joint carrier, the address, phone number, and a contact for each joint carrier listed in the tariff publication.

PART 342—OIL PIPELINE RATE METHODOLOGIES AND PROCEDURES

6. The authority citation for part 342 continues to read as follows:

Authority: 5 U.S.C. 571–583; 42 U.S.C. 7101–7532; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

7. Section 342.3 is amended by removing paragraph (b)(2), redesignating

[17] 18 CFR 380.4 (1998).

[18] 18 CFR 380.4(a)(2)(ii)(1998).

[19] 5 U.S.C. 601–612 (1988).

[20] 5 CFR part 1320 (1998).

paragraph (b)(1) as paragraph (b), and revising redesignated paragraph (b) and paragraph (d)(3) to read as follows:

§ 342.3 Indexing.

* * * * *

(b) *Information required to be filed with rate changes.* The carrier must comply with part 341 of this chapter. Carriers must specify in their letters of transmittal required in § 341.2(c) of this chapter the rate schedule to be changed, the proposed new rate, the prior rate, the prior ceiling level, and the applicable ceiling level for the movement. No other rate information is required to accompany the proposed rate change.

(c) * * *

(d) * * *

(3) A carrier must compute the ceiling level each index year without regard to the actual rates filed pursuant to this section. All carriers must round their ceiling levels each index year to the nearest hundredth of a cent.

* * * * *

PART 343—PROCEDURAL RULES APPLICABLE TO OIL PIPELINE PROCEEDINGS

8. The authority citation for part 343 continues to read as follows:

Authority: 5 U.S.C. 571–583; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

9. Section 343.2 is amended by revising paragraph (c)(4) to read as follows:

§ 343.2 Requirements for filing interventions, protests and complaints.

* * * * *

(c) * * *

(4) A protest or complaint that does not meet the requirements of paragraphs (c)(1), (c)(2), or (c)(3) of this section, whichever is applicable, will be dismissed.

PART 346—OIL PIPELINE COST-OF-SERVICE FILING REQUIREMENTS

10. The authority citation for part 346 continues to read as follows:

Authority: 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

11. Section 346.2 is amended by revising paragraph (c)(7) to read as follows:

§ 346.2 Material in support of initial rates or change in rates.

* * * * *

(c) * * *

(7) *Statement G—revenues.* This statement must set forth the gross revenues for the actual 12 months of experience as computed under both the presently effective rates and the proposed rates. If the presently effective rates are not at the maximum ceiling rate established under § 342.3 of this chapter, then gross revenues must also be computed and set forth as if the ceiling rates were effective for the 12 month period.

PART 357—ANNUAL SPECIAL OR PERIODIC REPORTS: CARRIERS SUBJECT TO PART I OF THE INTERSTATE COMMERCE ACT

12. The authority citation for part 357 continues to read as follows:

Authority: 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

13. Section 357.3 is revised to read as follows:

§ 357.3 FERC Form No. 73, oil pipeline data for depreciation analysis.

(a) *Who must file.* Any oil pipeline company requesting new or changed depreciation rates pursuant to part 347 of this chapter if the proposed depreciation rates are based on the remaining physical life of the properties or if directed by the Commission to file service life data during an investigation of its book depreciation rates.

(b) *When to submit.* Service life data is reported to the Commission by an oil pipeline company, as necessary, concurrently with a filing made pursuant to part 347 of this chapter and as directed during a depreciation rate investigation.

(c) *What to submit.* The format and data which must be submitted are prescribed in FERC Form No. 73, Oil Pipeline Data for Depreciation Analysis, available for review at the Commission's Public Reference Section, Room 2A, 888 First Street, NE, Washington, D.C. 20426.

PART 362—[REMOVED AND RESERVED]

14. Part 362 is removed in its entirety and reserved.

PART 385—RULES OF PRACTICE AND PROCEDURE

15. The authority citation for part 385 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

§ 385.101 [Amended]

16. Section 385.101 is amended by removing paragraphs (b)(3) and (b)(4)(i), and redesignating paragraph (b)(4)(ii) as paragraph (b)(3).

17. Section 385.102 is amended by revising paragraphs (a) and (e)(2) to read as follows:

§ 385.102 Definitions (Rule 102).

(a) *Decisional authority* means the Commission or Commission employee that at the time for decision on a question, has authority or responsibility under this chapter to decide that particular question.

* * * * *

(e) * * *

(2) With respect to any proceeding not set for hearing under subpart E of this part, any employee designated by rule or order to conduct the proceeding.

* * * * *

18. Section 385.502 is amended by removing paragraph (a)(3) and revising paragraph (a)(1) to read as follows:

§ 385.502 Initiation of hearing (Rule 502).

(a) * * *

(1) Order of the Commission; or

* * * * *

19. Sections 385.1403 and 385.1405 through 385.1414 are removed and sections 385.1404 and 385.1415 are redesignated paragraphs 385.1403 and 385.1404.

20. Section 385.1902 is amended by removing paragraph (b), redesignating paragraph (c) as paragraph (b), and revising paragraph (a) to read as follows:

§ 385.1902 Appeals from action of staff (Rule 1902).

(a) Any staff action (other than a decision or ruling of presiding officer, as defined in Rule 102(e)(1), made in a proceeding set for hearing under subpart E of this part) taken pursuant to authority delegated to the staff by the Commission is a final agency action that is subject to a request for rehearing under Rule 713 (request for rehearing).

* * * * *

[FR Doc. 98–28545 Filed 10–23–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 4, 153, 157 and 375

[Docket No. RM98–16–000]

Collaborative Procedures for Energy Facilities Applications; Notice of Technical Conference

October 20, 1998.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Technical Conference.

SUMMARY: The Federal Energy Regulatory Commission (Commission) intends to hold a staff technical conference on November 5, 1998 at 9:00 AM, in the Commission Meeting Room, 888 First Street, N.E., Washington, D.C., to discuss the proposed pre-filing collaborative process.

DATES: The conference will be held on November 5, 1998.

ADDRESSES: The conference will be held in the Commission Meeting Room, 888 First Street, NE., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Thomas Russo, Office of Pipeline Regulation, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 219–2792

Berne Mosley, Office of Pipeline Regulation, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 208–2256

Gordon Wagner, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 219–0122

Merrill Hathaway, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 208–0825.

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

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

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

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, RVJ International, Inc. RVJ International, Inc., is located in the Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426.

The Federal Energy Regulatory Commission (Commission) is proposing to expand its procedural regulations governing the authorization of natural gas facilities and services, and is considering revising its procedural regulations governing applications for licenses for hydroelectric projects.[1] The proposed regulations are intended to offer prospective applicants seeking to construct, operate or abandon natural gas facilities or services the option, in appropriate circumstances and prior to filing an application, of using a collaborative process to resolve significant issues. In addition, a significant portion of the environmental review process should be completed as part of the pre-filing collaborative process. This pre-filing collaborative process is comparable to the process the Commission recently adopted with respect to applications for hydroelectric licenses, amendments and exemptions and, like those regulations, is optional and is designed to be adaptable to the facts and circumstances of the particular case. The proposed regulations would not delete or replace any existing regulations. Finally, the Commission is considering whether the existing collaborative process for hydroelectric license and exemption applications, as well as the proposed collaborative process for natural gas facilities and services, should be made mandatory.

A staff technical conference will be held on November 5, 1998, to provide an overview of the proposed pre-filing collaborative process and to respond to questions. Additional conferences will be held at a later date in Houston and Chicago. These conferences are designed as workshops in which Commission staff will present information and respond to questions concerning the proposed collaborative process as an aid to assist participants in developing comments in response to and as requested in the September 30, 1998 Notice of Proposed Rulemaking. Accordingly, there will be no transcript and statements made in the context of the workshops will not become part of the record in this proceeding. All parties—particularly those with experience with collaborative processes, whether at this agency or in another context—are invited to attend.

David P. Boergers,

Secretary.

[FR Doc. 98–28546 Filed 10–23–98; 8:45 am]

BILLING CODE 6717–01–M

[1] *See* 84 FERC ¶ 61,346 (September 30, 1998).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[ID23–7003; FRL–6179–5]

Determination That Pre-existing National Ambient Air Quality Standards for PM–10 No Longer Apply to Ada County/Boise State of Idaho

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: In this action, the Environmental Protection Agency (EPA) is proposing to determine that the national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM10) that existed before September 16, 1997, no longer apply to the Northern Ada County/Boise, Idaho area and to revoke the nonattainment designation associated with those standards. The State of Idaho has satisfied the requirements of the Clean Air Act (CAA) as well as EPA's regulations (40 CFR

50.6(d)) and Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM–10 NAAQS dated December 29, 1997.

DATES: Comments must be postmarked on or before November 25, 1998.

ADDRESSES: Written comments should be addressed to: Montel Livingston, SIP Manager, Office of Air Quality (OAQ–107), EPA, 1200 Sixth Avenue, Seattle, Washington 98101.

Copies of the State's request and other information supporting this proposed action are available for inspection during normal business hours at the following locations: EPA, Region 10, Office of Air Quality, 1200 Sixth Avenue (OAQ–107), Seattle, Washington 98101, and State of Idaho Division of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83720.

FOR FURTHER INFORMATION CONTACT: Rindy Ramos, Office of Air Quality (OAQ–107), EPA, Seattle, Washington 98101, (206) 553-6510.

SUPPLEMENTARY INFORMATION:

I. Background

On July 18, 1997, EPA revised the primary and secondary NAAQS for particulate matter (PM) by establishing annual and 24-hour particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers (PM2.5) standards and by changing the form of the existing 24-hour PM10 standard. The existing annual PM10 standard was retained; however, for the revised PM NAAQS, the requirement to correct the pressure and temperature of measured concentrations to standard reference conditions was removed. As noted in the preamble to the final rule promulgating the revised PM NAAQS, those revisions may potentially affect the effective stringency of the annual standard. These new standards became effective September 16, 1997. See 61 FR 65638 and 62 FR 38652.

EPA has developed guidance to ensure that momentum is maintained by States in their current air programs while moving toward developing their plans for implementing the new NAAQS. This document entitled Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM10 NAAQS, dated December 29, 1997, also reflects a July 16, 1997, Presidential Directive issued to Administrator Browner on implementation of the new standards. An additional document entitled Re-Issue of the Early Planning Guidance for the Revised Ozone and Particulate Matter (PM) National Ambient Air Quality Standards (NAAQS) dated June 16, 1998, outlines a process for States to review their existing CAA section 110 state implementation plans (SIPs).

To provide for an effective transition from the existing to the revised PM NAAQS, the effective date of the revocation of the PM10 NAAQS in effect before September 16, 1997, was delayed so that the existing standards and associated provisions would continue to apply for an interim period. See 62 FR 38701. EPA, therefore, promulgated regulatory provisions that provide for the continued applicability of the pre-existing PM10 NAAQS until certain criteria are met. 40 CFR 50.6(d). Among other things, these provisions state that the pre-existing PM10 NAAQS will no longer apply to an area that as of September 16, 1997, is attaining those standards once (1) a SIP applicable to the area containing all PM10 control measures adopted and implemented by September 16, 1997 (i.e., the control measures that allowed the area to attain), has been approved by EPA and (2) a certification by the State that it has adequate authority and resources to implement the revised PM standards. In its December 29, 1997, guidance, EPA further stated that when the Agency had made a determination that the criteria set forth in 40 CFR 50.6(d) had been met for an area and, therefore, that the pre-existing PM10 standards no longer apply, ''the section 107 designation for PM10 for that area will also be revoked.'' This is because at that time the PM10 standards to which the current section 107 PM10 designation for the area relate would no longer exist.

On July 24, 1998, the State of Idaho submitted a request that EPA make a determination that the pre-existing PM10 NAAQS no longer apply to the Northern Ada County/Boise nonattainment area. Based on air quality data for the years 1994–1996, it is the State's position that the area has met the PM10 standards that were in effect prior to September 16, 1997. Idaho also requested that the CAA section 107 nonattainment area designation for the Northern Ada County/Boise area be revoked.

II. Analysis of Determination

Why Is EPA Determining That the PM10 Standards in Effect Before September 16, 1997 No Longer Apply to the Northern Ada County/Boise Nonattainment Area?

Northern Ada County/Boise has met the following requirements of 40 CFR 50.6(d): (1) The State has submitted air quality data for 1994–1996 which demonstrates that the area met the PM10 standards that were in effect before September 16, 1997. The area has not monitored a exceedance or violated the PM10 NAAQS during that time period. (2) The State has an approved PM10 State Implementation Plan (SIP) in place (see 59 FR 48582 and 61 FR 27019) that includes all control measures adopted and implemented at the State-level to meet the standards in effect before September 16, 1997. (3) In Idaho's July 24, 1998 request, the State has certified to EPA that it has adequate legal authority and resources to implement the revised PM NAAQS.

How Will the Determination by EPA That the PM10 Standards in Effect Before September 16, 1997 No Longer Apply Affect the Northern Ada County/Boise Nonattainment Area's Conformity and New Source Review Requirements?

As noted earlier, at the time that a determination by EPA that the pre-existing PM10 standards no longer apply for the area becomes effective, the section 107 PM10 designation will also be revoked. The termination of the applicability of the PM10 standards in effect before September 16, 1997, and the simultaneous revocation of the Northern Ada County/Boise area's current PM10 nonattainment designation, will also affect requirements that currently apply in the area due to the existence of those standards and designation. Specifically, the detailed provisions of subpart 4 of part D of title 1 of the CAA, which govern implementation of the pre-existing PM10 standards (PM10 standards in effect prior to July 18, 1997 when the revised PM NAAQS were promulgated) in areas designated nonattainment for those standards, will no longer apply once EPA makes the determination that the pre-existing PM10 standards no longer apply and the revocation of the section 107 designation become effective.

The conformity provisions of section 176(c) of the Act apply to areas that are designated nonattainment or that are subject to the requirement to submit a maintenance plan for any applicable standards under the Act. Because Northern Ada County/Boise is designated nonattainment for the pre-existing PM10 standards, it is subject to the requirements of general and transportation conformity. Consequently, once the current PM10 nonattainment designation is revoked for the area, these requirements will no longer be applicable.

Like conformity, the part D PM10 nonattainment new source review (NSR) requirements will no longer apply for the Northern Ada County/Boise area when the determination that the pre-existing PM10 standards no longer apply and the revocation of the nonattainment designation become

effective. Instead, the preconstruction review permit requirements for prevention of significant deterioration of air quality (PSD) will apply to major stationary sources seeking to construct or modify in that area. Under the PSD program, a major source which proposes to construct or modify must apply for a PSD permit if it locates in an area designated attainment or unclassifiable for any criteria pollutant, and it emits a regulated pollutant in significant amounts. The PSD requirements will apply in the Northern Ada County/Boise area, even after the pre-existing PM10 standards and the PM10 nonattainment designation are removed, because the area is currently designated attainment or unclassifiable for other criteria pollutants and because PM10 is still a regulated pollutant.

III. Summary of Action

The Northern Ada County/Boise area meets the requirements of 40 CFR 50.6(d). Accordingly, EPA is proposing to determine that the pre-existing PM10 standards no longer apply, and is proposing to revoke the nonattainment designation associated with those standards. Additionally, the State shall take steps to ensure that the measures to protect the PM NAAQS that were in place before September 16, 1997, shall stay in place and the State shall follow through in implementing its approved section 110 SIP to protect the new PM NAAQS effective after September 16, 1997, for this area.

In addition, EPA will be reformatting Idaho's 40 CFR 81.313 PM10 designation table. The table will be restructured to more accurately reflect the designation status of the area within each of Idaho's Air Quality Control Regions. However, because EPA proposes to revoke the PM10 nonattainment area designation only for the Northern Ada County/Boise nonattainment area, the designation status for all other areas within the State will remain unchanged. Restructuring of the table will not affect their status.

EPA is soliciting public comment on its proposed action. Interested parties are invited to comment on all aspects of this proposed action. Comments should be submitted to the address listed in the front of this document. Public comments postmarked by November 25, 1998, will be considered in the final rulemaking action taken by EPA.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

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

This rule is not subject to E.O. 13045 because it is not economically significant as defined under E.O. 12866, and because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This action will affect the regulatory status of a geographical area and will not impose any new regulatory requirements on sources. For this reason, the Administrator certifies that this action has no significant impact on any small entities, nor will it affect a substantial number of small entities.

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective

and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed action does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. Because EPA is not imposing new Federal requirements, neither State, local, or tribal governments, nor the private sector should incur costs from this action.

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

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Particulate matter.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas, Air quality control regions.

Dated: October 19, 1998.

Chuck Clarke,

Regional Administrator, Region 10.

[FR Doc. 98–28620 Filed 10–23–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50628D; FRL–6041–2]

RIN 2070–AB27

Proposed Significant New Use Rule; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; Extension of comment period.

SUMMARY: EPA is extending the comment period for the proposed significant new use rule (SNUR) for twelve chemical substances. As initially published in the **Federal Register** of September 9, 1998 (63 FR 48157) (FRL–6020–8) the comments were to be received on or before October 9, 1998. One commenter requested additional time to research and submit more detailed comments concerning two of the proposed SNURs. EPA is therefore extending the comment period 30 days in order to give all interested persons the opportunity to comment fully.

DATES: Written comments must be submitted to EPA by November 9, 1998.

ADDRESSES: Each comment must bear the appropriate docket control number OPPTS–50628C. All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. G–099, East Tower, Washington, DC 20460.

Comments and data may also be submitted electronically to: oppt.ncic@epa.gov. Follow the instructions under Unit I. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this proposed rule. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–531, 401 M St., SW., Washington, DC 20460, telephone: (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document are available from the EPA Home Page at the **Federal Register**-Environmental Documents entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr/).

This extension of the comment period will allow interested parties who intend to comment on the proposed rule additional time to consider their response.

I. Public Record and Electronic Submissions

The official record for this proposed rule, as well as the public version, has been established for this proposed rule under docket control number OPPTS–50628C (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC.

Electronic comments can be sent directly to EPA at:

oppt.ncic@epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number OPPTS–50628C. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: October 19, 1998.

Ward Penberthy,

Acting Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98–28619 Filed 10–23–98; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket Number NHTSA–98–4573]

School Bus Research Plan

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for comments.

SUMMARY: On August 7, 1998, NHTSA sent to Congress a report titled, ''School Bus Safety: Safe Passage for America's Children.'' The report outlined NHTSA's current and future actions on school bus safety. A comprehensive research plan for the next generation of occupant protection in school buses was announced. This notice seeks comments

and information pertinent to the execution of that plan. A copy of this report is available on NHTSA's web site at: http://www.nhtsa.dot.gov/people/injury/buses/schbus/schbussafe.html.

Every year, approximately 440,000 public school buses travel about 4.3 billion miles to transport 23.5 million children to and from school and school-related activities. The school bus occupant fatality rate of 0.2 fatalities per 100 million vehicle miles traveled (VMT) is much lower than the rates for passenger cars (1.5 per 100 million VMT) or light trucks and vans (1.3 per 100 million VMT). School bus transportation is one of the safest forms of transportation in the United States. On average, nine school bus occupants per year die in school bus crashes. While each of these fatalities is tragic, the numbers of fatalities among school bus occupants are extremely small when compared to those in other types of motor vehicles. For example, in 1997, five passenger occupants in a school bus body-type of vehicle died in a crash. During the same year, 4,811 children between the ages of 5 and 18 died in all other types of motor vehicles.

This excellent safety record of school buses notwithstanding, NHTSA believes that school transportation should be held to the highest levels of safety, since such transportation involves the Nation's most precious cargo—children who represent our future.

Even though compartmentalization has proven to be an excellent concept for injury mitigation, the agency has initiated an extensive research program to develop the next generation occupant protection system. The objective of NHTSA's Research Plan is to scientifically determine the real-world effectiveness of current Federal requirements for school bus occupant crash protection, evaluate alternative occupant crash protection systems in controlled laboratory tests that represent the types of real-world school bus crashes, and based on the findings, propose the next generation of occupant protection requirements for school buses. Each system studied must meet all of the following criteria: is likely to reduce the total number of injuries or fatalities associated with school bus crashes, provides protection to the whole range of occupants who are transported in schools buses, is technologically feasible, is reasonable in cost, and does not substantially reduce the occupant capacity of school buses or substantially inhibit emergency evacuation.

DATES: Comments must be received by December 28, 1998.

All written comments should refer to the docket number and notice number in the heading of this notice and be submitted, preferably 10 copies, to: DOT Docket Management Facility, U.S. Department of Transportation, Room PL–01, 400 7th Street, SW, Washington, DC 20590. The docket is open to the public from 10:00 am to 5 pm, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Linda McCray, Office of Vehicle Safety Research, NRD–11, NHTSA, 400 7th Street, SW, Washington, DC 20590 (telephone 202–366-6375, Fax: 202–366–7237).

SUPPLEMENTARY INFORMATION: The primary means of occupant protection for large school buses is a concept known as compartmentalization—strong, well padded, well anchored, high backed, closely spaced seats. Even though compartmentalization has proven to be an excellent concept for injury mitigation, the agency has initiated a research program to develop the next generation of occupant protection for school bus passengers. This comprehensive program will evaluate alternative occupant crash protection systems in controlled laboratory tests that represent the types of real world school bus crashes that produce injuries to passengers. A key component of this program will necessarily be a thorough search for better crash data. Existing state and school systems records will be searched for documentation on school bus crashes involving fatalities/injuries and specific crashes in which lap belts were used. Those crash data will be vital to defining the test conditions that best simulate the most injurious school bus crashes. Alternative systems will be tested and evaluated for their ability to protect the full range of sizes of school bus occupants. The systems tested must not significantly reduce the occupant capacity of the bus or significantly restrict emergency egress. If it is determined that all these criteria can be met, the agency will consider upgrading its occupant protection standards.

School Bus Research Plan

Research will be conducted in three (3) phases: Phase I—Problem Definition, Phase II—Test Procedure Development, and Phase III—Testing and Validation.

Phase I: Problem Definition will consist of analyzing NHTSA's Fatality Analysis Reporting System (FARS), General Estimates System (GES) and National Automotive Sampling System databases for school bus crashes and corresponding injuries, a literature search for existing school bus related research (listed above), identification of safety systems that are currently available or will be in near term, and in-depth special investigations of existing state and school system records on bus crashes involving fatalities/injuries and specific crashes in which occupants wore lap belts. The agency will conduct a detailed review of crash data to upgrade existing data to better define crashes that produce injury to occupants. The answers to the following items will be of help to the agency in determining its future course of action with respect to school buses.

1. While the agency believes that it is aware of most of the research that evaluates the occupant protection in school buses, the agency is interested in research reports that documents the testing of safety devices or systems in modern school buses.

2. The agency is interested in investigating crashes that have occurred in large school buses, particularly those crashes that have resulted in injuries, and is asking for assistance in locating detailed information on these school bus crashes.

3. The agency is also interested in investigating crashes that have occurred in large and small school buses equipped with lap belts and is asking for assistance in locating detailed information on these school bus crashes.

Phase II: Test Procedure Development will consist of developing test conditions that best simulate the types of school bus crashes that lead to serious injuries, as identified through Phase I research. Crash ''pulses'' will be developed by conducting full scale school bus crash testing at various impact angles. Using the derived crash pulses, a sled test procedure (crash simulation) will be developed and validated. If necessary, new occupant protection countermeasures will be designed and developed, either by modifying existing systems and components, or developing new systems. Preliminary tests to verify the systems will be conducted prior to final sled testing. A sled test matrix to evaluate the new or altered occupant protection systems will be developed.

In order to ensure that any safety enhancements/devices tested provide protection to the whole range of sizes of people that school buses transport, the agency is planning to use available anthropometric test dummies (ATDs) that represent the six-year-old child, the 5th percentile female and the 50th percentile male.

Safety improvements currently under consideration for testing are lap belts, lap/torso belts, lap bars, bus side wall padding and armrests.

4. Since lap belts have been required in small school buses for some time now, the

agency is also interested in obtaining information on whether there have been any lap belt-caused injuries to occupants of small school buses.

5. The agency is concerned that widening of a school bus seat to allow for the placement of armrests will require that the school bus body be made wider in order to maintain the same capacity. Should this be a serious concern, it is important for the agency to know the extent to which the widening of the school bus seat would cause the capacity to be reduced or the widening of school bus body would cause maneuverability problems.

The agency is also interested in obtaining information on other devices/systems that may improve occupant protection in school bus crashes. Please note, NHTSA does not have legal authority to provide appropriated funds for the private development of commercial products. Suggestions should be accompanied by a statement of the rationale for the suggested device/system and the expected consequences that such devices/systems will have on school bus transportation. Suggestions should address at least the following considerations:

Administrative/compliance burdens,

Cost effectiveness,

Costs of the existing regulation and the proposed changes to consumers,

Costs of testing or certification to regulated parties,

Effects on safety,

Effects on small businesses,

Enforceability of the standard, and

Whether the suggestion reflects a ''common sense'' approach to solving the problem

Statements should be as specific as possible and provide the best available supporting information. Statements also should specify whether any change recommended in the regulatory process would require a legislative change in NHTSA's authority.

Phase III: Testing and Validation will consist of testing the various occupant protection safety systems developed or identified. The types of tests to be conducted will be both static and dynamic. Test results will be analyzed and a final report published.

In order to provide for a more controlled environment the agency is planning to evaluate each device/system by conducting crash simulations (sled tests).

Submission of Comments

NHTSA invites written comments from all interested parties. It is requested but not required that 10 copies be submitted.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, Room 5219, at the street address given above, and copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR part 512.)

All comments received before the close of business on the comment closing date indicated above will be considered. Comments will be available for inspection in the docket.

After the closing date, NHTSA will continue to file relevant information in the docket as it becomes available. It is therefore recommended that interested persons continue to examine the docket for new material.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

Issued: October 20, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–28569 Filed 10–23–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571, 585, 587, and 595

[Docket No. NHTSA 98–4405, Notice 2]

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of public meeting.

SUMMARY: We are issuing this document to announce that we will be holding a public meeting on technical issues relating to our proposal to require advanced air bags. The purposes of our public meeting are to review and discuss our technical paper on proposed injury criteria; and our technical paper on crash tests and other tests.

DATES: We will hold the public meeting on November 23 and 24, 1998, from 9:00 a.m. to 5:00 p.m. If you wish to participate in the meeting, please contact Clarke Harper, at the address or telephone number listed below, by November 12, 1998. If you plan to present a statement during the meeting, please provide a copy of your statement to Mr. Harper by November 16, 1998.

ADDRESSES: We will hold the public meeting in room 2230 of the Nassif Building, 400 Seventh St., S.W., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Clarke Harper, Office of Crashworthiness Standards, National Highway Traffic Safety Administration, 400 Seventh St., S.W., Washington, D.C., 20590 (telephone 202–366–2264; fax 202–493–2739).

SUPPLEMENTARY INFORMATION:

Background

A. Summary of Proposal for Advanced Air Bags

On September 18, 1998, we published in the **Federal Register** (63 FR 49958) a notice of proposed rulemaking (NPRM) to upgrade Standard No. 208, Occupant Crash Protection, to require advanced air bags. The advanced air bags would be required in some new passenger cars and light trucks beginning September 1, 2002, and in all new cars and light trucks beginning September 1, 2005.

The goal of our proposal is to preserve and enhance the benefits of air bags while minimizing the risks. We are proposing to add a new set of requirements to prevent air bags from causing serious injuries and to expand the existing set of requirements intended to improve the ability of air bags to cushion and protect occupants in frontal crashes.

Our proposals include several new performance requirements to ensure that the advanced air bags do not pose unreasonable risks to out-of-position occupants. To ensure that the new air bags are designed to avoid causing serious injury to a broad array of occupants, we would test the air bags using test dummies representing 12-month-old, 3-year-old, and 6-year-old children and 5th percentile adult females.

We are also proposing requirements that would improve the ability of air bags to cushion and protect a broader array of belted and unbelted occupants, including small women. The standard's current dynamic crash test requirements specify the use of 50th percentile adult male dummies only. Under our proposal, we would also use 5th percentile adult female dummies in the future. The weight and size of these dummies are representative of not only small women, but also many teenagers.

We are proposing to phase out the current unbelted sled test option as requirements for advanced air bags are phased in. This would mean that vehicles with advanced air bags would

be required to be certified to the unbelted barrier test at speeds up to and including 30 mph.

Finally, we are proposing new and/or upgraded injury criteria for all of the standard's test requirements. For example, we have developed injury criteria and seat positioning procedures that we believe are appropriate for small females. Among other things, we are including neck injury criteria, since persons close to the air bag at deployment are at greater risk of neck injury. We are also proposing to upgrade the current chest injury criteria.

B. Technical Papers

In support of our proposal to require advanced air bags, our Office of Research and Development prepared two technical papers. One paper is titled ''Development of Improved Injury Criteria for the Assessment of Advanced Automotive Restraint Systems.'' This paper documents the proposed injury criteria for specified body regions, including both the rationale and performance limits associated with them for all the various size dummies included in the proposal.

The second paper is titled ''Review of Potential Test Procedures for FMVSS No. 208.'' This paper reviews potential test procedures for evaluating frontal crashworthiness, including full frontal fixed barrier tests, oblique frontal fixed barrier tests, sled tests with a generic crash pulse, frontal fixed offset deformable barrier tests, perpendicular moving deformable barrier tests, oblique moving deformable barrier tests, and full frontal fixed deformable barrier tests.

Public Meeting

A. Purposes

The purposes of the meeting are to review and discuss—

- our technical paper on proposed injury criteria; and
- our technical paper on crash tests and other tests.

B. Procedural Matters and Agenda

We will devote the first day, November 23, to our technical paper on proposed injury criteria and related issues. The second day, November 24, will be devoted to our technical paper on crash tests and other tests and related issues. If you plan to present a statement on the second technical paper, please address the following question in your statement: Which tests best replicate what happens in motor vehicles during those real world crashes that can cause serious or fatal injury?

To the extent that participants recommend alternatives to our proposal, we request that they be as specific as possible. We particularly request that any participants recommending an alternative to the unbelted barrier test address the issues raised by Question 22 in the NPRM for advanced air bags (63 FR at 49982), and by the questions in the Appendix to that NPRM at the end of section C (63 FR at 50020).

Each day will have two sessions. Each day's morning session will begin with a brief presentation by the agency, followed by presentations by public participants concerning technical issues. We will determine the time available for individual presentations based on the number of persons who submit requests to participate by the November 12 deadline. We encourage parties with similar points of view to coordinate their presentations to avoid duplication.

No opportunity will be afforded the public to directly question participants in the meetings. However, the public may submit written questions to the presiding panel of Federal officials for the panel to consider asking of particular participants. The presiding officials reserve the right to ask questions of all persons making oral presentations.

The agenda for the public meeting is set forth below:

Agenda for Public Meeting on Advanced Air Bags

Day One

I. Introduction
  Agency presentation—Brief overview of NPRM and supporting technical papers
II. Technical paper on proposed injury criteria
  A. Agency presentation summarizing its paper analyzing the criteria
  B. Presentation by public of prepared statements

Day Two

III. Technical paper on crash tests and other tests—Which tests best replicate what happens in real world crashes that can cause serious or fatal injury?
  A. Agency presentation summarizing its paper analyzing the tests
  B. Presentation by public of prepared statements

To facilitate communication, we will provide auxiliary aids (e.g., sign-language interpreter, braille materials, large print materials and/or a magnifying device) to participants as necessary, during the meeting. Any person desiring assistance of auxiliary aids should contact Mr. Harper no later than 10 days before the meeting. For any presentation that will include slides, motion pictures, or other visual aids, the presenters should bring at least one copy to the meeting so that we can readily include the material in the public record.

We will place a copy of any written statement in the docket for this rulemaking. In addition, we will make a verbatim record of the public meeting and place a copy in the docket.

C. Availability of Relevant Documents

The September 18 proposal for advanced air bags and the two technical papers have been placed in the docket. You may either visit the docket in Washington, DC, or by the Web.

The docket is located at Room PL–401, 400 Seventh Street, S.W., Washington, DC.. Docket hours are 9 a.m. to 5 p.m., Monday through Friday. The Docket Management website is at ''http://dms.dot.gov/''. You should search for docket number 4405.

The September 18 proposal (typewritten version) and the two technical papers are also available on NHTSA's website. The address for this site is ''http://www.nhtsa.dot.gov/''. You should select ''Advanced Air Bags'' under ''Popular Information.''

D. Written Comments

If you wish to submit written comments on the issues discussed at the meeting, please combine them with your written comments on our September 18 proposal for advanced air bags. The comment closing date for written comments on the proposal is December 17, 1998. We set forth procedures related to the submission of written comments in our proposal.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

Issued on: October 20, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–28522 Filed 10–21–98; 10:30 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 285, 630, and 678

[I.D. 071698B(2)]

RIN 0648–AJ67

Atlantic Highly Migratory Species Fisheries

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

ACTION: Notice of availability of a draft fishery management plan (FMP); request for comments.

SUMMARY: NMFS announces the submission of the draft Fishery Management Plan for Atlantic Highly Migratory Species (HMS) for Secretarial review. The draft HMS FMP integrates existing management for the Atlantic tunas, swordfish, and shark fisheries, defines overfishing criteria, develops rebuilding management strategies, describes and identifies essential fish habitat (EFH), and establishes framework procedures for regulatory changes.

DATES: Written comments on the draft HMS FMP must be received on or before January 25, 1999.

ADDRESSES: Written comments on the draft HMS FMP should be sent to, and copies of the document are available from, Rebecca Lent, Chief, Highly Migratory Species Management Division, NMFS, 1315 East-West Highway, Silver Spring, MD, 20910.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin at (301) 713–2347.

SUPPLEMENTARY INFORMATION: Beginning January 1, 1992, the Secretary of Commerce (Secretary) was granted the authority to manage Atlantic tunas under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq*.). To date, no FMP has been implemented for tunas, and Atlantic tunas have been managed under the authority of the Atlantic Tunas Convention Act (ATCA, 16 U.S.C. 971 *et seq*.). Atlantic tunas regulations are found at 50 CFR part 285. The Atlantic swordfish fishery is managed under an FMP implemented on September 18, 1985, and its implementing regulations at 50 CFR part 630, under the authority of the Magnuson-Stevens Act and ATCA. Atlantic sharks are managed under an FMP, implemented on February 25, 1993, under the authority of the Magnuson-Stevens Act, with regulations published at 50 CFR part 678.

Upon implementation of the HMS FMP, the Secretary will issue Atlantic tunas and North Atlantic swordfish regulations under the authority of both the Magnuson-Stevens Act and ATCA. Regulations issued under the authority of ATCA carry out the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The South Atlantic swordfish stock is not included in this draft FMP because its range does not extend into the Exclusive Economic Zone of the United States. Therefore, the South Atlantic swordfish will be managed solely under ATCA. Because Atlantic sharks are not subject to ICCAT management recommendations, they will continue to be managed solely under authority of the Magnuson-Stevens Act.

If approved, the HMS FMP will integrate management for Atlantic tunas, swordfish, and sharks, replacing the existing FMPs. This draft FMP was developed in coordination with the development of Amendment 1 to the Atlantic Billfish FMP. The HMS FMP will define overfishing status determination criteria, which designate western Atlantic bluefin tuna, North Atlantic swordfish, and large coastal sharks of the Atlantic as overfished. NMFS has developed a domestic rebuilding strategy that identifies biomass and fishing mortality targets, and proposes a suite of management alternatives designed to reduce fishing mortality, bycatch, and bycatch mortality. Preferred alternatives include measures to rebuild overfished fisheries in timeframes consistent with guidelines for implementation of national standard 1 of the Magnuson-Stevens Act, to control fishing effort and allocate domestic landing quotas, and to address issues of safety at sea, enforcement, permitting, reporting, and catch monitoring. NMFS does not identify a preferred alternative for bluefin tuna stock rebuilding in the draft FMP because new information on stock status and/or recovery trajectories from the recent 1998 assessment, as well as negotiations at the 1998 ICCAT meeting, could result in development of new rebuilding alternatives for the bluefin tuna stock. The preferred alternative for bluefin tuna rebuilding will be identified following the November 1998 ICCAT meeting. NMFS will publish the preferred alternative and associated analyses as an addendum to the draft FMP, and will propose measures to implement the preferred alternative in a separate rulemaking. In addition, EFH is described and identified for Atlantic tunas, sharks, and swordfish.

All existing management measures are retained under the draft FMP. Modifications to measures are proposed as preferred alternatives. Should NMFS determine that further changes are necessary once the FMP is final, they will be made through the FMP amendment process or through rulemaking as described in the FMP framework provisions.

In a separate document to be published in the **Federal Register**, NMFS will propose regulations to implement the preferred alternatives specified in the draft HMS FMP. During the comment period on the proposed rule, NMFS will hold public hearings on the draft FMP and on the proposed implementing regulations. The dates and locations of these public hearings will be published in the **Federal Register** at a later date. In addition to the other measures, NMFS specifically requests comments on the designation of *Sargassum* as EFH for Atlantic HMS, and on the effect of spotter plane use on bluefin tuna catch rates. The draft FMP does not propose measures relating to spotter planes; however, NMFS is conducting further analyses and is collecting information on the issue. NMFS also seeks determinations from coastal states on whether the preferred management measures would be consistent with the existing or planned state regulations and should be applicable in state waters. All comments on the FMP or on the proposed rule during their respective comment periods will be addressed in the final rule.

Authority: 16 U.S.C. 1801 *et seq*. and 16 U.S.C. 971 *et seq*.

Dated: October 21, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries,National Marine Fisheries Service.

[FR Doc. 98–28602 Filed 10–21–98; 1:16 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 101498C]

RIN 0648–AJ50

Fisheries of the Exclusive Economic Zone off Alaska; Amendment 56 to the Fishery Management Plan for Groundfish of the Gulf of Alaska and Amendment 56 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area

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

ACTION: Notice of availability; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 56 to the Fishery Management Plan for Groundfish of the Gulf of Alaska and Amendment 56 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMPs). These amendments would revise the definition of overfishing levels (OFL) for groundfish species or species groups in the FMPs. This action is necessary to revise the definition of OFL for consistency with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and is intended to advance the Council's ability to achieve, on a continuing basis, the optimum yield from fisheries under its authority. NMFS is requesting comments from the public on the proposed amendments, copies of which may be obtained from the Council (See **ADDRESSES**).

DATES: Comments on Amendments 56/56 must be submitted by December 28, 1998.

ADDRESSES: Comments on the proposed amendments should be submitted to Sue Salveson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P.O. Box 21668, Juneau, Alaska, 99802, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of Amendments 56/56 and the Environmental Assessment prepared for the proposed amendments are available from the North Pacific Fishery Management Council, 605 West 4th Ave., Suite 306, Anchorage, AK 99501–2252; telephone 907–271–2809.

FOR FURTHER INFORMATION CONTACT: James Hale, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

The Magnuson-Stevens Act requires that each Regional Fishery Management Council submit any fishery management plan or plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, after receiving a fishery management plan or amendment, immediately publish a notice in the **Federal Register** that the fishery management plan or amendment is available for public review and comment. This action constitutes such notice for Amendments 56/56 to the FMPs. NMFS will consider the public comments received during the comment period in determining whether to approve, disapprove, or partially approve these amendments.

Section 301(a) of the Magnuson-Stevens Act establishes national standards for fishery conservation and management. All fishery management plans must be consistent with those standards for approval by NMFS. National standard 1 requires conservation and management measures to ''prevent overfishing while achieving, on a continuing basis, the optimum yield'' from fisheries in Federal waters. National Standard 2 requires further that conservation and management measures be based on the best scientific information available.

Prior to its amendment in 1996, the Magnuson-Stevens Act did not define overfishing. Advisory national standard guidelines for the development of fishery management plans and amendments, pursuant to section 301(b) of the Magnuson-Stevens Act and codified at 50 CFR part 600, required that each fishery management plan specify an objective and measurable definition of overfishing for each managed stock or stock complex. The guidelines further required that an overfishing definition (1) have sufficient scientific merit, (2) be likely to protect the stock from closely approaching or reaching an overfished status, (3) provide a basis for objective measurement of the status of the stock against the definition, and (4) be operationally feasible. The Council developed such an objective and measurable definition of overfishing and, in 1991, implemented that definition under Amendments 16 and 21 to the FMPs (56 FR 2700, January 24, 1991).

In 1996, with increased understanding of the reference fishing mortality rates used to determine Acceptable Biological Catches (ABCs) and OFLs, the Council recommended, and NMFS approved, the existing definition of overfishing: A 6–tiered system accommodating different levels of reliable information available to fishery scientists for determining OFLs. Fishery scientists use the equations from an appropriate tier to determine when a stock is overfished according to the reliability of information available. The 6–tiered system accomplishes three basic functions: (1) It compensates for uncertainty in estimating fishing mortality rates at a level of maximum sustainable yield (MSY) by establishing fishing mortality rates more conservatively as biological parameters become more imprecise; (2) it relates fishing mortality rates directly to biomass for stocks below target abundance levels, so that fishing mortality rates fall to zero should a stock become critically depleted; and (3) it maintains a buffer between ABC and the overfishing level. Further information and background on the OFL definition contained in Amendments 44/44 may be found in the Notice of Availability published at 61 FR 54145 on October 17, 1996.

Revised Definition of OFL

On October 11, 1996, the President signed into law the Sustainable Fisheries Act (Public Law 104–297), which made numerous amendments to the Magnuson-Stevens Act. The amended Magnuson-Stevens Act now defines the terms ''overfishing'' and ''overfished'' to mean a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield (MSY) on a continuing basis (§ 3(29)), and requires that all fishery management plans:

> ''Specify objective and measurable criteria for identifying when the fishery to which the plan applies is overfished (with an analysis of how the criteria were determined and the relationship of the criteria to the reproductive potential of stocks of fish in that fishery) and, in the case of a fishery which the Council or the Secretary has determined is approaching an overfished condition or is overfished, contain conservation and management measures to prevent overfishing and rebuild the fishery'' (§ 303 (a)(10)).

The Magnuson-Stevens Act further requires Regional Fishery Management Councils to submit amendments, by October 11, 1998, that would bring fishery management plans into compliance.

In April 1998, the Council and its Advisory Panel and Scientific and Statistical Committee (SSC) reviewed a draft analysis of alternatives for revising

the existing OFL definitions. On May 1, 1998, NMFS published revised advisory national standard guidelines to assist Regional Fishery Management Councils in updating FMPs for consistency with this definition of overfishing and with other provisions of the amended Magnuson-Stevens Act. In June 1998, the Council recommended the present proposed amendments to the FMPs.

The Magnuson-Stevens Act and the revised guidelines constitute a significant policy shift in the treatment of MSY. MSY represents the largest long-term average catch or yield that can be taken from a stock or stock complex under prevailing ecological and environmental conditions. The guidelines indicate that MSY, treated as a target strategy under the current FMP definition of overfishing, should represent a limit rather than a target. This means that ''limit'' harvest strategies (such as the rules used to specify OFL) should result in a long-term average catch that approximates MSY, and that ''target'' harvest strategies (such as the rules used to specify ABC) should result in catches that are substantially more conservative than the limit. Because tiers 2–4 of the current FMP definition of overfishing could be interpreted as treating MSY as a target rather than as a limit. Amendments 56/56 would revise tiers 2–4 as follows.

Tiers 2–4 currently depend on reliable point estimates of certain fishing mortality rates designated as $F_{30\neq}$ and $F_{40\neq}$ —rates of fishing that reduce the amount of spawning contributed by an average fish over the course of its lifetime to 30 percent and 40 percent, respectively, of the amount that would be contributed in the absence of fishing. $F_{30\neq}$ represents a fishing rate arrived at by scientists and used by fisheries managers in the recent past to serve as a warning point that the MSY rate has probably already been exceeded and that any further increase in the rate of fishing could lead to overfishing. Amendments 56/56 would revise the default value from $F_{30\neq}$ to the more conservative estimate of $F_{35\neq}$. Tier 2 currently sets the OFL rate equal to MSY inflated by a ratio of the fishing mortality rates of $F_{30\neq}$ to $F_{40\neq}$ and sets the target ABC rate at less than or equal to the MSY rate. This tier is proposed to be revised to set the OFL limit equal to the MSY rate and set the ABC rate at less than or equal to MSY reduced by the ratio of fishing mortality rates $F_{40\neq}$ to $F_{35\neq}$.

The advisory guidelines interpret the new statutory definition of overfishing by determining a stock to be overfished whenever it falls below a ''minimum stock size threshold'' (MSST). The MSST is defined, in part, on the basis of a stock's ability to rebuild within 10 years if fished at the maximum allowable level (i.e., if catch were to equal the OFL in each of the next 10 years). This approach provides additional protection for the environment by assuring that remedial action is taken when stock size falls below the MSY level.

However, the Council and its SSC found that specification of an MSST does not seem warranted in the case of Gulf of Alaska and Bering Sea and Aleutian Islands groundfish. The Council's approach of using a biomass-based policy that reduces fishing mortality as stocks decrease in size was selected to provide for automatic rebuilding. The principal requirement for a stock that falls below its MSST is that it be harvested with a strategy designed to rebuild it within the statutory time frame of 10 years. Given the SSC's belief that the current stock assessment approach is sufficient to assure that harvest levels provide for rebuilding within 10 years, the Council and the SSC viewed the specification of an MSST as unnecessary. Thus, assuming that the SSC is correct in its finding that the current approach automatically assures sufficient rebuilding within 10 years, specification of an MSST in the FMPs would not be necessary.

The Director of the Alaska Fisheries Science Center, NMFS, (Director) has certified, with reservations, that the proposed definition of overfishing complies with the provisions of the guidelines at 50 CFR 600.310(d)(5) that an overfishing definition (1) have sufficient scientific merit, (2) contain the criteria for specification of stock status determination provided in 50 CFR 600.310(d)(2), (3) provide a basis for objective measurement of the status of the stock against the criteria, and (4) be operationally feasible.

This proposed overfishing definition is fundamentally the same as that implemented by Amendments 44/44 to the FMPs; the scientific merit, operational feasibility, and provision for objective measurement remain unchanged. Hence, the rationale for the Director's certification under criteria (1), (3), and (4) above remains the same as discussed in the Notice of Availability for Amendments 44/44 published at 61 FR 54145 on October 17, 1996.

The reason that the proposed amendments are certified with reservations is that the proposed overfishing definition lacks the MSST specified by 50 CFR 600.310(d)(2), but satisfies the intent of the MSST with features that accomplish the same objective. Specifically, the proposed definition would automatically reduce the fishing mortality rate for any stocks that fall below reference abundance levels whenever such levels can be estimated. Thus, the proposed definition prevents overfishing and ensures that stocks rebuild to those reference levels in a conservative fashion. This proposed action contains no implementing regulations.

Dated: October 20, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–28600 Filed 10–23–98; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 63, No. 206

Monday, October 26, 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 COMMERCE

Bureau of Export Administration

Materials Processing Equipment Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials Processing Equipment Technical Advisory Committee will meet on November 17, 1998, 9:00 a.m., Room 1617M–2, in the Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, N.W., Washington, D.C. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials processing equipment and related technology.

Agenda

General Session

1. Opening remarks by the Chairman
2. Presentation of papers or comments by the public
3. Election of Committee Chairman
4. Update on Wassenaar Arrangement negotiations
5. Discussion on proposal for making Control List Category 2 more ''user friendly''

Closed Session

6. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. Reservations are not required. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials, the Committee suggests that presenters forward the materials prior to the meeting date to the following address: Ms. Lee Ann Carpenter, Advisory Committees MS:3886C, Bureau of Export Administration, 15th St. & Pennsylvania Ave, N.W., U.S. Department of Commerce, Washington, D.C. 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on December 3, 1997, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, D.C. 20230. For more information, contact Lee Ann Carpenter on (202) 482–2583.

Dated: October 20, 1998.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 98–28628 Filed 10–23–98; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092898C]

Small Takes of Marine Mammals Incidental to Specified Activities; Construction of an Offshore Platform in the Beaufort Sea

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

ACTION: Notice of receipt of application and proposed authorization for a small take exemption; request for comments.

SUMMARY: NMFS has received a request from the BP Exploration (Alaska), 900 East Benson Boulevard, Anchorage, AK 99519 (BPXA) for an authorization to take small numbers of marine mammals by harassment incidental to construction of an offshore oil platform and subsea pipeline at Northstar in the Beaufort Sea in state waters. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to authorize BPXA to incidentally take, by harassment, small numbers of marine mammals in the above mentioned area between December 1, 1998, and November 30, 1999.

DATES: Comments and information must be received no later than November 25, 1998.

ADDRESSES: Comments on the application should be addressed to Michael Payne, Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225. A copy of the application and a list of references used in this document may be obtained by writing to this address or by telephoning one of the contacts listed here. A copy of the draft environmental impact statement (DEIS) may be obtained by contacting the U.S. Army Engineer District, Alaska, Regulatory Branch, P.O. Box 898, Anchorage, AK 99506–0898.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, (301) 713–2055, Brad Smith, (907) 271–5006.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the

monitoring and reporting of such taking are set forth.

On April 10, 1996 (61 FR 15884), NMFS published an interim rule establishing, among other things, procedures for issuing incidental harassment authorizations (IHAs) under section 101(a)(5)(D) of the MMPA for activities in Arctic waters. For additional information on the procedures to be followed for this authorization, please refer to that document.

Summary of Request

On August 14, 1998, NMFS received an application from BPXA requesting a 1-year authorization for the harassment of small numbers of several species of marine mammals incidental to construction of the Northstar development in the Alaskan Beaufort Sea. While a brief description of the proposed activity is provided here, a more detailed description of the activity and the expected impact can be found in the application and DEIS (see ADDRESSES).

BPXA proposes to produce crude oil from the Northstar Unit, which is located between 2 and 8 miles (mi)(3.2 and 12.9 kilometers (km)) offshore from Pt. Storkersen, AK. This unit is adjacent to the Prudhoe Bay industrial complex and is approximately 54 mi (87 km) northeast of Nuiqsut, a Native Alaskan community. The proposed construction activity during the period of the proposed incidental harassment authorization includes the construction of three ice roads, one from either West Dock or Pt. McIntyre to a gravel mine site, a second from a gravel mine site to Seal Island and a third from the shore crosisng of the pipeline following the pipeline route to Seal Island; the construction of a gravel island work surface for drilling and oil production facilities; and two pipelines, one to transport crude oil and one for gas for field injection. NMFS anticipates that this 1-year authorization will not be continued into a second year (if necessary to complete construction) but will instead be followed by a set of regulations and a Letter of Authorization, under section 101(a)(5)(A) of the MMPA, governing incidental takes of marine mammals from construction and operations of the Northstar Development and other offshore oil and gas developments in the U.S. Beaufort Sea. An application for a small take authorization under section 101(a)(5)(A) of the MMPA is under development by BPXA.

Ice-covered Season: Ice road construction will take place during the winter, 1998/99. Ice roads constructed inside the barrier islands will be bottom-fast while ice roads offshore will be on artificially thickened floating ice. Island construction will be at the location of the existing man-made Seal Island. It is estimated that approximately 16,800 large-volume haul trips between the onshore mine site and a reload area in the vicinity of Egg Island and 28,500 lighter dump truck trips from Egg Island to Seal Island will be necessary to transport construction gravel to Seal Island. An additional 300 truck trips will be necessary to transport concrete-mat slope protection materials to the island.

Two 10–inch (0.25 m)pipelines are planned. The offshore portions will each be 6 mi (9.5 km) in length and will be constructed between January and April, 1999. Both pipelines will be buried together in a common trench and backfilled. Trenching will be done from thickened ice using excavation and construction equipment. This work is expected to be completed by the end of April.

Open-water Season: During the summer 1999, open water season, BPXA expects to transport the drill rig(s) and some of the process and production modules to Seal Island via ocean-going barges. In addition, barges will also be used to support construction during the summer, and helicopters will support drill rig installation until ice roads are constructed next winter. Up to 75 barge trips are expected between Prudhoe Bay and/or Endicott to Seal Island during the open water season (July to September, 1999). By August 31, 1999, all island and pipeline construction and sheet pile and slope protection installation operations are expected to be completed. Operations during September will be limited, and barge transport will be limited to waters west of Cross Island, minimizing the possibility for interference with subsistence hunting.

Some process and camp modules are scheduled to arrive from Anchorage or the Prudhoe Bay area via sealift or local barge service on approximately August 15, 1999, with offloading completed by August 21, 1999. A drill rig is scheduled to be moved by local barge to the island for arrival by September 7, 1999, with offloading completed by September 30, 1999. Construction activities may continue on the island through the autumn and early winter of 1999. Activities on and near the island during the period October through December will depend upon progress up to that time. Some of the construction activities planned for earlier months may need to continue during the autumn.

Description of Habitat and Marine Mammal Affected by the Activity

A detailed description of the Beaufort Sea ecosystem and its associated marine mammals can be found in the DEIS prepared for this authorization (Corps of Engineers (Corps), 1998). This information is not repeated here but will be considered part of the record of decision for this application. A copy of the DEIS is available upon request (see ADDRESSES).*Marine Mammals*

The Beaufort/Chukchi Seas support a diverse assemblage of marine mammals, including bowhead whales (*Balaena mysticetus*), gray whales (*Eschrichtius robustus*), beluga (*Delphinapterus leucas*), ringed seals (*Phoca hispida*), spotted seals (*Phoca largha*) and bearded seals (*Erignathus barbatus*). Descriptions of the biology and distribution of these species and of others can be found in several documents (e.g., Hill *et al*., 1997) including the BPXA application and the DEIS. Please refer to those documents for information on these species. For the purpose of making a determination that the taking by this activity will have no more than a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) of marine mammals for subsistence uses, NMFS adopts the information contained in these documents as part of its record of decision. In addition to the species mentioned in this paragraph, Pacific walrus and polar bears also have the potential to be taken. Appropriate applications for taking these species under the MMPA have been submitted to the U.S. Fish and Wildlife Service by BPXA.

Potential Effects on Marine Mammals

Sounds and non-acoustic stimuli will be generated by vehicle traffic, ice-cutting, pipeline construction, offshore trenching, gravel dumping, sheet pile driving, and vessel and helicopter operations. The sounds generated from the construction operations and associated transportation activities will be detectable underwater and/or in air some distance away from the area of the activity, depending upon the nature of the sound source, ambient noise conditions, and the sensitivity of the receptor. At times, some of these sounds are likely to be strong enough to cause an avoidance or other behavioral disturbance reaction by small numbers of marine mammals or to cause masking of signals important to marine mammals. The type and significance of behavioral reaction is likely to depend

on the species and season, and the behavior of the animal at the time of reception of the stimulus, as well as the distance and level of the sound relative to ambient conditions.

In winter and spring, on-ice travel and construction activities will displace some ringed seals along the ice road and pipeline construction corridors. BPXA plans to begin winter construction activities prior to female ringed seals establishing birthing lairs beginning in late March. The noise and general human activity will displace female seals away from activity areas that could negatively affect the female and young, if birth lairs were contstructed there. If construction activities are initiated in previously undisturbed areas after March 20, BPXA will be required to survey the area(s) to identify and avoid ringed seal lairs by a minimum of 50 m (164 ft). Due to mitigation and monitoring, it is not expected that any ringed seals will be killed or seriously injured during this time.

During the open-water season, all six species of whales and seals could potentially be exposed to vessel or construction noise and to other stimuli associated with the planned operations. Vessel traffic is known to cause avoidance reactions by whales at certain times (Richardson *et al*., 1995). Pile driving, helicopter operations, and possibly other activities may also lead to disturbance of small numbers of seals or whales. In addition to disturbance, some limited masking of whale calls or other low-frequency sounds potentially relevant to bowhead whales could occur.

BPXA estimates that up to 219 ringed seals and 1 bearded seal may be incidentally harassed during the ice-covered period. During the open-water season, BPXA estimates that up to 319 ringed seals, 10 spotted seals, 26 bearded seals, 23 bowhead whales, 10 gray whales, and 250 beluga whales may be incidentally harassed. Because of residency, some ringed seals may be taken by harassment more than once during this period. Please refer to the application for the rationale supporting these estimated harassment takes of individual animals.

Impacts on Affected Species

For a discussion on the anticipated effects of ships, boats, aircraft, and construction activities at Northstar on marine mammals, please refer to the application (BPXA, 1998). NMFS proposes to adopt this information as a summarization of the best scientific information available on this subject.

Effects of Activities on Habitat

The Northstar Development area is not known to be an area of concentrated mating or feeding of any marine mammal species. Anticipated impacts by Northstar construction on the habitat include temporarily elevated noise levels, potential bottom disturbance due to additional gravel placement on Seal Island and pipeline trenching activities, and the permanent loss of approximately 86,130 m^2 (926,250 ft^2) of habitat due to island reconstruction. These effects will be localized at the site of the project.

Effects of Activities on Subsistence Needs

The disturbance and potential displacement of bowhead whales and other marine mammals by sounds from vessel traffic and/or on-island construction activities (e.g., impact hammering) are the principle concerns related to subsistence use of the area. The harvest of marine mammals (mainly bowhead whales, ringed seals, and bearded seals) is central to the culture and subsistence economies of the coastal North Slope communities (BPXA, 1998). In particular, if elevated noise levels are displacing migrating bowhead whales farther offshore, this could make the harvest of these whales more difficult and dangerous for hunters. The harvest could also be affected if bowheads become more skittish when exposed to vessel or impact-hammering noise (BPXA, 1998).

Construction activities and associated vessel and aircraft (helicopter) support are expected to begin in December and continue into October 1999, depending upon ice conditions. Few bowhead whales approach the Northstar area before the end of August, and subsistence whaling generally does not begin until after September 1 and occurs in areas well east of the construction site. Therefore, a substantial portion of the Northstar development will be completed when no bowhead whales are nearby and when no whaling is underway. Insofar as possible, vessel and aircraft traffic near areas of particular concern for whaling will be completed by BPXA before the end of August. No impact hammering will occur during the period when subsistence hunting of migrating bowhead whales is underway.

Nuiqsut is the community closest to the area of the proposed activity, and it harvests bowhead whales only during the fall whaling season. In recent years, Nuiqsut whalers typically take zero to four whales each season (BPXA, 1998). Nuiqsut whalers concentrate their efforts on areas north and east of Cross Island, generally in water depths greater than 20 m (65 ft). Cross Island, the principle field camp location for Nuiqsut whalers, is located approximately 28.2 km (17.5 mi) east of the Northstar construction activity area.

Whalers from the village of Kaktovik search for whales east, north, and west of their village. Kaktovik is located approximately 200 km (124.3 mi) east of Seal Island. The westernmost reported harvest location was about 21 km (13 mi) west of Kaktovik, near 70°10'N, 144°W (Kaleak, 1996). That site is approximately 180 km (112 mi) east of Seal Island.

Whalers from the village of Barrow search for bowhead whales much further from the Northstar area, >250 km (>175 mi) west.

Effects of Northstar construction on migrating bowheads are not expected to extend into the area where Nuqsut hunters usually search for bowheads. However, it is recognized that it is difficult to determine the maximum distance at which reactions occur (Moore and Clark, 1992). As a result, in order to avoid any unmitigable adverse impact on subsistence needs and to reduce potential interference with the hunt, the timing of various construction activities at Northstar as well as barge and aircraft traffic in the Cross Island area will be addressed in a Communications and Avoidance Agreement between BPXA and North Slope Borough residents. Also, NMFS believes that the monitoring plan proposed by BPXA will provide information that will help resolve uncertainties about the effects of construction noise on the accessibility of bowheads to hunters.

While Northstar activity has some potential to influence subsistence seal hunting activities, the most important sealing area for Nuiqsut hunters is off the Colville delta, extending as far west as Fish Creek and as far east as Pingok Island (BPXA, 1998). Pingok Island is about 24 km (15 mi) west of Northstar. The peak season for seal hunting is during the summer months, but some hunting is conducted on the landfast ice in late spring. In summer, boat crews hunt ringed, spotted and bearded seals (BPXA, 1998). Thus, it is unlikely that construction activity will have a significant negative impact on Nuiqsut seal hunting.

Mitigation

Several mitigation measures have been proposed by BPXA to reduce harassment takes to the lowest level practicable. These include:

(1) BPXA will begin winter construction activities prior to female ringed seals establishing the birthing lair in late March to early April in order to displace seals away from activities that could negatively affect the female and young.

(2) If construction activities are initiated in previously undisturbed areas after March 20, BPXA will survey the area(s) to identify and avoid ringed seal lairs by a minimum of 50 m (164 ft).

(3) BPXA will establish and monitor a 190 dB re 1 μPa safety range for seals around the island for those noisier activities.

(4) While whales are unlikely to approach the island during impact hammering or other noisy activities, a 180 dB re 1 μPa safety zone will be established and monitored around the island.

(5) If any marine mammals are observed within their respective safety range, operations will cease until such time as the observed marine mammals have left the safety zone.

(6) Project scheduling indicates that impact hammering will not occur during the period for subsistence hunting of westward migrating bowhead whale.

(7) Helicopter flights to support Northstar construction will be limited to a corridor from Seal Island to the mainland, and, except when limited by weather, will maintain a minimum altitude of 1,000 ft (305 m).

Monitoring

Monitoring will employ both marine mammal observations and acoustics measurements and recordings. During the open-water period, monitoring will consist of (1) acoustic measurements of sounds produced by construction activities through hydrophones, seaborne sonobuoys and bottom recorders, and (2) observations of marine mammals from an elevated platform on Seal Island will be made during periods with and without construction underway (see page 94 of application).

During the ice-covered season, BPXA proposes to continue an ongoing (since the spring, 1997) Before-After/Control-Impact Study on the distribution and abundance of ringed seals in relation to development of the offshore oil and gas resources in the central Beaufort Sea. Collection and analysis of data before and after construction is expected to provide a reliable method for assessing the impact of oil and gas activities on ringed seal distribution in the Northstar construction area. Other winter/spring monitoring will include (1) on-ice searches for ringed seal lairs in areas where construction starts in the mid-March through April period, (2) assessment of abandonment rates for seal holes, and (3) acoustic measurements of sounds and vibrations from construction.

The monitoring plan will be subject to review by NMFS biologists and revised appropriately prior to implementation. Independent peer review is not warranted on the on-ice portion of the plan. This work has been underway since the winter 1997/98 and on-ice monitoring was reviewed during the May, 1998 workshop held in Seattle, WA. The open-water season monitoring plan however will be reviewed next spring at the annual peer-review workshop held in Seattle.

Reporting

BPXA will provide two initial reports on 1998 activities to NMFS within 90 days of completion of each phase of the activity. The first report will be due 90 days after the ice roads are no longer usable or spring aerial surveys are completed, whichever is later. The second report will be forwarded to NMFS 90 days after the formation of ice in the central Alaskan Beaufort Sea. These reports will provide summaries of the dates and locations of construction activities, details of marine mammal sightings, estimates of the amount and nature of marine mammal takes, and any apparent effects on accessibility of marine mammals to subsistence hunters.

A draft final technical report will be submitted to NMFS by April 1, 2000. The final technical report will contain a full description of the methods, results, and interpretation of all monitoring tasks. The draft final report will be subject to peer review before finalized by BPXA.

National Environmental Policy Act (NEPA)

On June 12, 1998 (63 FR 32207), the Environmental Protection Agency noted the availability for public review and comment a DEIS prepared by the Corps under NEPA on Beaufort Sea oil and gas development at Northstar. Comments on that document were accepted by the Corps until August 31, 1998 (63 FR 43699, August 14, 1998). NMFS is a cooperating agency, as defined by the Council on Environmental Quality regulations (40 CFR 1501.6), on the preparation of this document. This DEIS, which supplements information contained in the application, is considered part of NMFS' record of decision for determining whether the activity proposed for receiving a small take authorization is having a negligible impact on affected marine mammal stocks and not having an unmitigable adverse impact on subsistence needs. Based upon a review of the Final EIS (FEIS) and the comments received on this proposed authorization, NMFS will (1) adopt the Corp FEIS, (2) amend the Corps FEIS to incorporate relevant comments, suggestions and information, or (3) based upon comments received, prepare and release for comment a draft Environmental Assessment. NMFS will not issue an IHA until its responsibilities under NEPA have been met.

Consultation

Under section 7 of the Endangered Species Act (ESA), NMFS will complete formal consultation with the Corps on the Beaufort Sea oil and gas development project at Northstar. NMFS will also consult with itself on the issuance of an incidental harassment authorization for this activity. If an authorization to incidentally harass listed marine mammals is issued under the MMPA, NMFS will issue an Incidental Take Statement under section 7 of the ESA for listed marine mammals.

Conclusions

NMFS has preliminarily determined that the impact of constructing the Northstar Development in the U.S. Beaufort Sea will result, at worst, in a temporary modification in behavior by certain species of cetaceans and pinnipeds. During the ice-covered season, pinnipeds close to the island may be subject to incidental harassment due to the localized displacement from construction of ice roads and from transportation activities on that road. As cetaceans will not be in the area during the ice-covered season, they will not be affected. During the open-water season, the principal construction-related activities will be helicopter traffic, vessel traffic, and some construction activity on Seal Island. Sheet-pile driving is expected to be completed prior to whales being present in the area. Sounds from construction activities on the island are not expected to be detectable more than about 5–10 km (3.1–6.2 mi) offshore of the island. Disturbance to bowhead or beluga whales by on-island activities will be limited to an area substantially less than that distance. Helicopter traffic will be limited to nearshore areas between the mainland and the island and is unlikely to approach or disturb whales. Barge traffic will be located mainly inshore of the whales and will involve vessels moving slowly, in a straight line, and at constant speed. Little disturbance or

displacement of whales by vessel traffic is expected. While behavioral modifications may be made by these species to avoid the resultant noise, this behavioral change is expected to have no more than a negligible impact on the animals.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals (which vary annually due to variable ice conditions and other factors) in the area of operations, because the proposed activity is in shallow waters inshore of the main migration corridor for bowhead whales and far inshore of the main migration corridor for belugas, the number of potential harassment takings is estimated to be small. In addition, no take by injury and/or death is anticipated, and the potential for temporary or permanent hearing impairment will be avoided through the incorporation of the mitigation measures mentioned in this document. No rookeries, areas of concentrated mating or feeding, or other areas of special significance for marine mammals occur within or near the planned area of operations during the season of operations.

Because bowhead whales are east of the construction area in the Canadian Beaufort Sea until late August/early September, activities at Northstar are not expected to impact subsistence hunting of bowhead whales prior to that date. Appropriate mitigation measures to avoid an unmitigable adverse impact on the availability of bowhead whales for subsistence needs will be the subject of consultation between BPXA and subsistence users.

Also, while construction at Northstar has some potential to influence seal hunting activities by residents of Nuiqsut, because (1) the peak sealing season is during the winter months, (2) the main summer sealing is off the Colville Delta), and (3) the zone of influence from Northstar on belukha and seals is fairly small, NMFS believes that Northstar construction will not have an unmitigable adverse impact on the availability of these stocks for subsistence uses.

Proposed Authorization

NMFS proposes to issue an IHA for the taking of marine mammals incidental to construction of the Northstar development project in the Alaskan Beaufort Sea, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of only small numbers of bowhead whales, gray whales, belukha whales, ringed seals, bearded seals, and spotted (largha) seals; would have a negligible impact on these marine mammal stocks; and would not have an unmitigable adverse impact on the availability of marine mammal stocks for subsistence uses.

Information Solicited

NMFS requests interested persons to submit comments and information concerning this request (see **ADDRESSES**).

Dated: October 20, 1998.

Hilda Diaz-Soltero,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–28601 Filed 10–23–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101698H]

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene public meetings.

DATES: The meetings will be held on November 9–12, 1998.

ADDRESSES: These meetings will be held at the Galveston Island Hilton Resort, 5222 Seawall Boulevard, Galveston, TX; telephone: 1–800–475–3386.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION:

Council

November 11, 1998

8:30 a.m.—Convene.

9:00 a.m. - 3:00 p.m.—Receive public testimony on red snapper total allowable catch (TAC).

3:00 p.m. - 5:30 p.m.—Receive the Reef Fish Management Committee Report.

November 12, 1998

8:30 a.m. - 9:00 a.m.—Receive the Shrimp Management Committee Report.

9:00 a.m. - 10:00 a.m.—Receive the Joint Reef Fish/Shrimp Committee Report.

10:00 a.m. - 11:00 a.m.—Receive Sustainable Fisheries Committee Report.

11:00 a.m. - 11:15 a.m.—Receive the Migratory Species Committee Report.

11:15 a.m. - 11:30 a.m.—Receive the Personnel Committee Report.

11:30 a.m. - 11:45 a.m.—Receive the International Commission for the Conservation of Atlantic Tunas Advisory Committee Meeting Report.

11:45 a.m. - 12:00 noon—Receive the South Atlantic Fishery Management Council (SAFMC) Liaison Report.

12:00 noon - 12:15 p.m.—Receive Enforcement Reports.

12:15 p.m. - 12:45 p.m.—Receive Director's Reports.

12:45 p.m. - 1:00 p.m.—Other business.

November 9, 1998

11:00 a.m. - 12:00 noon—Orientation session for new Council members.

1:00 p.m. - 5:00 p.m.—Convene the Reef Fish Management Committee to review the stock assessment update for red snapper and the recommendations of the Reef Fish Stock Assessment Panel (RFSAP), Socioeconomic Panel, Red Snapper Advisory Panel (RSAP), and the Scientific and Statistical Committee. The committee will develop their recommendations to the Council on TAC for red snapper and possibly other regulatory measures included in the framework procedure of the Reef Fish Fishery Management Plan (FMP), as amended. The recommendations of the Reef Fish Committee will be considered by the Council on Wednesday, November 11, 1998, following public testimony.

November 10, 1998

8:00 a.m. - 10:00 a.m.—Convene a joint meeting of the Reef Fish and Shrimp Management Committees to review a report entitled ''An Alternative View Regarding Appropriate SPR Threshold and Targets for Gulf of Mexico Red Snapper.'' The Committee will also consider comments on the report by the RFSAP and critiques by other peer reviewers.

10:00 a.m. - 11:30 a.m.—Convene the Shrimp Management Committee to review a protocol for certifying additional bycatch reduction devices (BRDs) developed by NMFS. NMFS will also provide the Committee with an update of the BRD evaluation study and a status report of the certification of the

Parker turtle excluder device. A draft of a scoping document for Amendment 10 to the Shrimp FMP will also be reviewed.

11:30 a.m. - 12:00 noon—Convene the Personnel Committee to review staff health benefits.

1:00 p.m. - 2:30 p.m.—Convene the Migratory Species Committee to review a newly completed draft of the Highly Migratory Species FMP that addresses the current commercial and recreational fisheries for tuna, swordfish, and sharks. The Committee will also discuss an amendment to the Billfish FMP which includes Atlantic blue and white marlin, Western Atlantic sailfish, and longbill spearfish.

2:30 p.m. - 5:30 p.m.—Convene the Sustainable Fisheries Committee to review the Generic Sustainable Fisheries Act (SFA) Amendment that contains, among other provisions, alternatives for specifying maximum sustainable yield, optimum yield, overfishing and overfished definitions, and rebuilding periods for overfished stocks. The Generic SFA Amendment includes all stocks currently under management by the Council, including jointly managed species and, as such, the Committee will also consider approval of the SFA amendment of the SAFMC.

Although other issues not contained in this agenda may come before the Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically identified in the agenda 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 Anne Alford at the Council (see **ADDRESSES**) by November 2, 1998.

Dated: October 20, 1998.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–28598 Filed 10–23–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102098D]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of committee meeting.

SUMMARY: The Pacific Northwest Crab Industry Advisory Committee has scheduled a meeting.

DATES: The meeting will be held on Friday, November 20, 1998.

ADDRESSES: The meeting will be held at the Leif Erickson Lodge, 2245 NW 57th Street, Seattle, WA.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Arni Thomson, Alaska Crab Coalition, 206–547–7560.

SUPPLEMENTARY INFORMATION: The Committee will convene at 9:00 a.m. and continue until the following subjects have been addressed:

1. Reports on the 1999 budget for the Alaska Department of Fish and Game (ADF&G); the ADF&G proposed observer program, Crab Plan Team activities.

2. Status of crab stocks.

3. Proposed delay in season openings.

4. Tanner crab harvest and rebuilding strategy.

5. Review of American Fisheries Act, SB 1221.

6. Review proposals submitted to the Alaska Board of Fisheries for their March 1999 meeting.

Although other issues not contained in this agenda may come before the 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 to those issues specifically identified 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 Helen Allen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: October 20, 1998.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–28599 Filed 10–23–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. 980326078–8078–01]

Request for Comments on Proposed Internet Usage Policy

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice and request for public comments.

SUMMARY: The Patent and Trademark Office (PTO) requests comments on a proposed Internet usage policy. The policy is intended to provide guidance to PTO employees regarding the use of the Internet for official PTO business. The policy is to cover (1) communications with applicants via Internet electronic mail (e-mail) and (2) using the Internet to search for information concerning patent applications and elements appearing in trademark applications.

DATES: Written comments on the proposed Internet usage policy will be accepted by the PTO until December 28, 1998.

ADDRESSES: Written comments should be addressed to the attention of Magdalen Greenlief, Office of the Deputy Assistant Commissioner for Patent Policy and Projects. Comments submitted by mail should be sent to: Box Comments—Patents, Assistant Commissioner for Patents, Washington, D.C. 20231. Comments may also be submitted by facsimile transmission to (703) 305–8825 or by electronic mail through the Internet to ''magdalen.greenlief@uspto.gov'.

Written comments will be available for public inspection in Suite 910 of Crystal Park 2, 2121 Crystal Drive, Arlington, Virginia. In addition, comments provided in machine-readable format will be available through the PTO's Website at http://www.uspto.gov.

FOR FURTHER INFORMATION CONTACT: Magdalen Greenlief, by mail to her attention addressed to Box Comments-Patents, Assistant Commissioner for Patents, Washington, D.C. 20231; by telephone at (703) 305–8813; by facsimile transmission to (703) 305–8825; or by electronic mail through the Internet to ''magdalen.greenlief@uspto.gov'.

SUPPLEMENTARY INFORMATION: The Commissioner of Patents and Trademarks issued a Notice entitled ''Interim Internet Usage Policy'' in the Official Gazette of the United States Patent and Trademark Office (O.G.) on February 25, 1997 at 1195 O.G. 89. The Notice set forth interim guidelines for PTO employees regarding the use of the Internet to conduct official PTO business. The Notice also stated that the guidelines are interim since the public has not had an opportunity to comment on them and that the PTO will publish a Notice in the **Federal Register** and the Official Gazette requesting comments from the public on the use of the Internet in the PTO's patent and trademark examination process. Pursuant to the February 25, 1997 O.G. Notice, the following proposed Internet Usage Policy is being published for public comment.

The Internet offers a highly effective means of identifying, locating, and retrieving scientific and technical information and also provides a means for the applicant to communicate with PTO employees via advanced electronic mail. Communications via Internet e-mail are at the discretion of the applicant. In view of the fact that all communications and data transmitted from or to applicant by the Internet may be neither encrypted nor secure, applicants who wish to communicate with the PTO on an unsecure medium such as Internet e-mail do so at their own risk. If an applicant wishes the PTO to communicate with the applicant on the unsecure medium, the applicant may authorize the PTO to do so by submitting a written authorization. Where the Internet is used to search patent applications, PTO employees must restrict their search operations to determining the general state of the art. The purpose of the Internet usage policy is to provide guidelines for PTO employees for using the Internet to conduct official PTO business.

(A) Regarding communications between PTO employees and applicant by electronic mail, the PTO is particularly interested in comments relating to the following:

(1) Regarding communication with the Patent Organization, where a written authorization by the applicant has been given, Patent Article 5 of the proposed Internet usage policy limits the use of the Internet e-mail for communications other than those under 35 U.S.C. 132 or which otherwise require a signature. Should such limitations be imposed? If so, what other types of correspondence should not be communicated via Internet e-mail?

(2) What type of confirmation, if any, from the PTO would you like to see regarding whether the e-mail with attachments has been received and is readable?

(3) Regarding communication with the Patent Organization, the ''Interim Internet Usage Policy'' published on February 25, 1997 at 1195 O.G. 89 indicated that an express waiver under 35 U.S.C. 122 by the applicant is required before Internet e-mail may be used by PTO employees to conduct official PTO business where sensitive data will be exchanged or where there exists a possibility that sensitive data could be identified. The reference to a waiver of 35 U.S.C. 122 has been deleted from the proposed Internet usage policy because it appears to be unnecessary. Are there any problems with the elimination of the waiver?

(4) Patent Article 7 and Trademark Article 8 of the proposed Internet usage policy permits PTO employees to respond to applicant's e-mail correspondence by other appropriate means such as telephone or by facsimile transmission. Would you prefer to have PTO employees respond via Internet e-mail or is the other appropriate means noted above acceptable?

(5) How likely would you utilize the Internet e-mail to conduct interviews under the conditions set forth in Patent Article 8 and Trademark Article 9 of the proposed Internet usage policy?

(6) In view of the fact that all communications and data transmitted from or to the applicant by the Internet may be neither encrypted nor secure, how likely and how often and for what purpose would you utilize the Internet e-mail to communicate with PTO employees regarding a particular application?

(7) Should digital signatures, digital certificates, public key/private key encryption and key recovery be used for Internet e-mail? If so, what software(s) should PTO use?

(B) The PTO is also interested in comments regarding searching and retrieving scientific and technical information in patent applications via the Internet, particularly comments relating to searching and retrieving scientific and technical information in patent applications which the PTO must maintain in confidence pursuant to 35 U.S.C. 122.

Please submit separate comments concerning patent provisions and trademark provisions. Although comments may be submitted by mail or facsimile transmission, the Office prefers to receive comments via the Internet. Where comments are submitted by mail, the Office would prefer that the comments be submitted on a DOS formatted 3.5″ disk accompanied by a paper copy of the comments.

Written comments should include the following information:

—Name and affiliation of the individual responding;
—An indication of whether the comments offered represent views of the respondent's organization or are the respondent's personal views; and
—If applicable, information on the respondent's organization, including the type of organization (e.g., business, trade group, university, nonprofit organization).

I. Proposed Patent Internet Usage Policy

Introduction

The Internet and its offspring, the World Wide Web (WWW), offer the PTO opportunities to (1) enhance operations by enabling Patent Examiners to locate and retrieve new sources of scientific and technical information, (2) communicate more effectively with our customers via advanced electronic mail (e-mail) and file transfer functions, and (3) more easily publish information of interest to the intellectual property community and the general public. This new technology offers low-cost, high speed, and direct communications capabilities upon which the PTO wishes to capitalize.

The organizations reporting to the Assistant Commissioner for Patents have special legal requirements that must be satisfied as part of the PTO's goal to make effective use of the Internet. Because security issues concerning transmission and capture of search requests by unauthorized individuals have not yet been resolved, Patent Examiners are to exercise good judgment and restrict their searches to nonspecific patent application uses.

Purpose

To establish a policy for use of the Internet by the Patent Examining Corps and other organizations within the PTO;

To address use of the Internet to conduct interview-like communications and other forms of formal and informal communications;

To publish guidelines for locating, retrieving, citing, and properly documenting scientific and technical information sources on the Internet;

To inform the public how the PTO intends to use the Internet; and

To establish a flexible Internet policy framework which can be modified, enhanced, and corrected as the PTO, the public, and customers learn to use, and

subsequently integrate, new and emerging Internet technology into existing business infrastructures and everyday activities to improve the patent application, the examining, and granting functions.

Article 1. Applicability

This policy applies to members of the Patent Organization within the PTO, including contractors and consultants working with, or conducting activities in support of, the Patent Organization.

Article 2. Scope

This policy applies to activities associated with, or directly related to, use of the Internet via PTO-provided network connections, facilities, and services. This includes, but is not limited to, PTONet connections, Office of Chief Information Officer (OCIO)-provided PCs and workstations, and Internet provider services. This policy also applies to use of other non-PTO Internet access facilities and equipment that are used to conduct non-patent application specific work.

Article 3. Conformance With Existing, PTO-wide, Internet Use Policy

This Internet Usage Policy supersedes the Interim Internet Usage Policy published in the Official Gazette on February 1997. The policy outlined in this document augments the existing PTO Internet Acceptable Use Policy as set forth in the Office Automation Services Guide. As such, this policy is an extension of current PTO office-wide Internet policy.

Article 4. Confidentiality of Proprietary Information

If security and confidentiality cannot be attained for a specific use, transaction, or activity, then that specific use, transaction, or activity shall NOT be undertaken/conducted.

All use of the Internet by Patent Organization employees, contractors, and consultants shall be conducted in a manner that ensures compliance with confidentiality requirements in statutes, including 35 U.S.C. 122, and regulations. Where a written authorization is given by the applicant for the PTO to communicate with the applicant via Internet e-mail, communications via Internet e-mail may be used.

Backup, archiving, and recovery of information sent or received via the Internet is the responsibility of individual users. The OCIO does not, and will not, as a normal practice, provide backup and recovery services for information produced, retrieved, stored, or transmitted to/from the Internet.

Article 5. Communications Via the Internet and Authorization

Communications via Internet e-mail are at the discretion of the applicant.

Without a written authorization by applicant in place, the PTO will not respond via Internet e-mail to any Internet correspondence which contains information subject to the confidentiality requirement as set forth in 35 U.S.C. 122. A paper copy of such correspondence will be placed in the appropriate patent application.

The following is a sample authorization form which may be used by applicant:

''Recognizing that Internet communications are not secure, I hereby authorize the PTO to communicate with me concerning any subject matter of this application by electronic mail. I understand that a copy of these communications will be made of record in the application file.''

A written authorization may be withdrawn by filing a signed paper clearly identifying the original authorization. The following is a sample form which may be used by applicant to withdraw the authorization:

''The authorization given on _____, to the PTO to communicate with me via the Internet is hereby withdrawn. I understand that the withdrawal is effective when approved rather than when received.''

Where a written authorization is given by the applicant, communications via Internet e-mail, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used. In such case, a printed copy of the Internet e-mail communications *MUST* be given a paper number, entered into the Patent Application Location and Monitoring System (PALM) and entered in the patent application file. A reply to an Office action may NOT be communicated by applicant to the PTO via Internet e-mail. If such a reply is submitted by applicant via Internet e-mail, a paper copy will be placed in the appropriate patent application file with an indication that the reply is NOT ENTERED.

PTO employees are NOT permitted to initiate communications with applicant via Internet e-mail unless there is a written authorization of record in the patent application by the applicant.

All reissue applications are open to public inspection under 37 CFR 1.11(a) and all papers relating to a reexamination proceeding which have been entered of record in the patent or reexamination file are open to public inspection under 37 CFR 1.11(d). PTO employees are NOT permitted to initiate communications with applicant in a reissue application or a patentee of a reexamination proceeding via Internet e-mail unless written authorization is given by the applicant or patentee.

Article 6. Authentication of Sender by a Patent Organization Recipient

The misrepresentation of a sender's identity (i.e., spoofing) is a known risk when using electronic communications. Therefore, Patent Organization users have an obligation to be aware of this risk and conduct their Internet activities in compliance with established procedures.

Internet e-mail must be initiated by a registered practitioner, or an applicant in a *pro se* application, and sufficient information must be provided to show representative capacity in compliance with 37 CFR 1.34. Examples of such information include the attorney registration number, attorney docket number, and patent application number.

Article 7. Use of Electronic Mail Services

Once e-mail correspondence has been received from the applicant, as set forth in Patent Article 4, such correspondence must be responded to appropriately. The Patent Examiner may respond to an applicant's e-mail correspondence by telephone, fax, or other appropriate means.

Article 8. Interviews

Internet e-mail shall NOT be used to conduct an exchange or communications similar to those exchanged during telephone or personal interviews unless a written authorization has been given under Patent Article 5 to use Internet e-mail. In such cases, a paper copy of the Internet e-mail contents *MUST* be made and placed in the patent application file as required by the Federal Records Act in the same manner as an Examiner Interview Summary Form is entered.

Article 9. Internet Searching

The ultimate responsibility for formulating individual search strategies lies with individual Patent Examiners, Scientific and Technical Information Center (STIC) staff, and anyone charged with protecting proprietary application data. When the Internet is used to search, browse, or retrieve information relating to a patent application, other than a reissue application or reexamination proceeding, Patent Organization users *MUST* restrict search queries to the general state of the art. Internet search, browse, or retrieval

activities that could disclose proprietary information directed to a specific application, other than a reissue application or reexamination proceeding, are NOT permitted.

This policy also applies to use of the Internet as a communications medium for connecting to commercial database providers.

Article 10. Documenting Search Strategies

All Patent Organization users of the Internet for patent application searches shall document their search strategies in accordance with established practices and procedures as set forth in MPEP 719.05 subsection (B)(6).

Article 11. Citations

All Patent Organization users of the Internet for patent application searches shall record their fields of search and search results in accordance with established practices and procedures as set forth in MPEP 719.05 subsection (B)(6).

Subparagraph A. Internet document citations should include information which is normally included for reference documents (i.e., Form PTO–892). In addition, any information which would aid a future searcher in locating the document should be included in the citation. Guidelines for citing electronic information can be found as an attachment to this policy.

Subparagraph B. When a document found on the Internet is not the original publication, then the Patent Examiner or STIC staff shall pursue the acquisition of a copy of the originally published document or an original of the document or Web object in question for all references cited. Note: scanned images are considered to be a copy of the original publication. Electronic-only documents are original publications.

Article 12. Professional Development

The Internet is recognized as a tool for professional development. It may be useful for keeping informed of technological and legal developments in all art areas. For example, use of the Internet for keeping abreast of conferences, seminars, and for receiving mail from appropriate list servers is acceptable.

Article 13. Policy Guidance and Clarifications

Within the Patent Organization, any questions regarding Internet usage policy should be directed to the user's immediate supervisor. Non-PTO personnel should direct their questions to the Office of the Deputy Assistant Commissioner for Patent Policy and Projects.

II. Proposed Trademark Internet Usage Policy

Introduction

The Internet and its offspring, the World Wide Web (WWW), offer the PTO opportunities to (1) enhance customer services by enabling attorney advisors (Trademarks) and other Trademark employees to locate and retrieve new sources of legal, scientific, commercial and technical information, (2) communicate more effectively with customers via electronic mail (e-mail) and file transfer functions, and (3) more easily publish information of interest to the intellectual property community and the general public.

This new technology offers low-cost, high speed, direct communication capabilities that the PTO wishes to leverage to the advantage of its customers.

The organizations reporting to the Assistant Commissioner for Trademarks have special legal requirements that must be satisfied as part of the PTO's goal to make effective use of the Internet and electronic commerce.

Purpose

To establish a policy for use of the Internet by organizations reporting to the Assistant Commissioner for Trademarks, including: the Office of the Assistant Commissioner for Trademarks, the Trademark Examining Operation, Trademark Services, Trademark Program Control and the Trademark Assistance Center;

To address use of the Internet to conduct interview-like communications, and other forms of formal and informal communications;

To publish guidelines for locating, retrieving, citing, and properly documenting scientific, commercial and technical information sources on the Internet;

To inform the public how the PTO intends to use the Internet; and

To establish a flexible Internet policy framework which can be modified, enhanced, and corrected as the PTO, the public, and customers learn to use, and subsequently integrate, new and emerging Internet technology into existing business infrastructures and everyday activities to improve the trademark application, examination, and registration business processes.

Article 1. Applicability

This policy applies to members of the Trademark Organization reporting to the Assistant Commissioner for Trademarks within the PTO, including contractors and consultants working with, or conducting activities in support of, the Trademark Organization. It does not apply to members of the Trademark Trial and Appeal Board or contractors and consultants working with, or conducting activities in support of, the Trademark Trial and Appeal Board.

Article 2. Scope

This policy applies to activities associated with, or directly related to, use of the Internet via PTO-provided network connections, facilities, and services. This includes, but is not limited to, PTONet connections, Office of Chief Information Officer (OCIO)-provided PCs and workstations, and Internet provider services. This policy also applies to use of other non-PTO Internet access facilities and equipment that are used to conduct non-trademark application specific work.

Article 3. Conformance With Existing, PTO-wide, Internet Use Policy

This Internet Usage Policy supersedes the Interim Internet Usage Policy published in the Official Gazette in February 1997. The policy outlined in this document augments the existing PTO Internet Acceptable Use Policy as set forth in the Office Automation Services Guide. As such, this policy is an extension of current PTO office-wide Internet policy.

Article 4. Correspondence Acceptable Via the Internet

Internet e-mail may be used to reply or respond to an examining attorney's Office Action, to reply or respond to a petitions attorney's 30-day letter, to reply or respond to a Post Registration Office Action, as well as to conduct informal communications regarding a particular application or registration with the appropriate Trademark Organization employee. If e-mail communication is initiated by the applicant or applicant's attorney, Office Actions, Priority Actions, Examiner's Amendments, petitions attorney's 30-day letters, and Post Registration Office Actions may be sent to the applicant via Internet e-mail or by telephone, fax, or other appropriate means. Readable attachments to Internet e-mail for such purposes as the submission of evidence, specimens, affidavits and declarations will be accepted.

Article 5. Communications Not Acceptable Via the Internet

Internet e-mail or other Internet communications may NOT be used to file Trademark Applications, Amendments to Allege Use, Statements

of Use, Requests for Extension of Time to File a Statement of Use, Section 8 affidavits, Section 9 affidavits, or Section 15 affidavits until such time as the PTO publishes electronic forms for these filings and they are made available on the Internet by the PTO. Internet e-mail may be used to submit specimens of use, but the Office will determine acceptability of the specimen(s) and if the specimens are found not to meet the standards for specimens of use, additional specimens will be required. Certified copies of foreign certificates will NOT be accepted via Internet e-mail. Internet e-mail may NOT be used for any correspondence with the Trademark Trial and Appeal Board.

Article 6. Initiating Internet Communications

Internet communications will NOT be initiated by the Trademark Organization unless it is authorized to do so by the applicant or by the applicant's attorney. Authorization for members of the Trademark Organization to communicate with applicant or applicant's attorney via Internet e-mail may be given by so indicating in the application submitted to the PTO or in any official written communication with the Trademark Organization. The authorization must include the Internet e-mail address to which all Internet e-mail is to be sent. Internet communications may also be initiated and authorized by applicant or applicant's attorney by telephone or by responding to an Office Action or other official communication via an Internet e-mail address indicated on the official correspondence.

Article 7. Waivers and Authentication

Applicants and their attorneys understand that the misrepresentation of a sender's identity is a known risk when using electronic communications. Therefore, Trademark Organization users have an obligation to be aware of this risk and conduct their Internet activities in compliance with established procedures.

Internet e-mail must be initiated and authorized by a practitioner, or the applicant in a *pro se* application. Sufficient information must be provided to show representative capacity in compliance with 37 CFR 2.17 and 10.14. In trademark cases, examples of such information would include signing a paper in practice before the PTO in a trademark case, attorney docket number, and trademark application serial number or registration number.

The Assistant Commissioner for Trademarks will waive 37 CFR 10.18 to the extent that it requires an original signature personally signed by a trademark practitioner in permanent ink on any correspondence filed with the PTO. Receipt of an Internet e-mail communication by the Trademark Organization from the address of applicant or applicant's attorney containing the /s/ notation in lieu of signature and which references a Trademark application serial number will be understood to constitute a certificate that:

1. The correspondence has been read by the applicant or practitioner;
2. The filing of the correspondence is authorized;
3. To the best of the applicant's or practitioner's knowledge, information, and belief, there is good ground to support the correspondence, including any allegations of improper conduct contained or alleged therein; and
4. The correspondence is not interposed for delay.

Applicants requesting to correspond with the Trademark Organization via the Internet should recognize that Internet communications might not be secure, and should understand that a copy of any and all communications received via the Internet will be placed in the file wrapper and become a permanent part of the record.

Article 8. Office Procedures

When authorized to do so, the Trademark Organization will send Office Actions and other official correspondence to the Internet e-mail address indicated by the applicant or applicant's attorney. A signed, paper copy of the outgoing correspondence will be associated with the trademark application file wrapper.

When communications are received by an examining attorney, or other appropriate Trademark Organization employee, the attorney or employee will immediately reply to the communication acknowledging receipt of the communication. The date the communication was received by the Trademark Organization that appears in the heading of the communication will constitute the receipt date within the PTO for purposes of time-sensitive communications unless that date is a Saturday, Sunday, or Federal holiday within the District of Columbia, in which case the receipt date will be the next succeeding day which is not a Saturday, Sunday, or Federal holiday within the District of Columbia. A paper copy of all Internet e-mail communications, including a copy of any and all attachments, will be associated with the trademark application file wrapper. A paper copy of any informal communications regarding a particular trademark application or registration will be associated with the file wrapper and become a part of the record.

Article 9. Remedies

When an application is held abandoned because a timely Internet e-mail communication was sent to and received by the Trademark Organization but was not timely associated with the application file wrapper, the abandoned application may be reinstated by the Trademark Organization. There is no fee for a request to reinstate such an application.

When an application is held abandoned because a timely Internet e-mail communication was sent to, but apparently not received by the Trademark Organization, applicant or applicant's attorney may petition the Commissioner to revive the abandoned application pursuant to 37 CFR 2.66 and TMEP §§ 1112.05(a), (b). In determining whether or not an Internet response was timely filed, the Commissioner may accept a copy of a signed certificate of transmission meeting the requirements of 37 CFR 1.8, a copy of the previously transmitted correspondence, and a statement attesting to the personal knowledge of timely transmission of the response. 37 CFR 1.8(b)(1), (2), and (3).

In all situations, the applicant or the applicant's attorney should promptly notify the Office after becoming aware that the application was abandoned because a communication was not timely associated with the file wrapper or was not received by the Office.

Article 10. Use of Electronic Mail Services

Once e-mail correspondence has been received from an applicant, as set forth in Trademark Article 6, such correspondence must be responded to appropriately. The Trademark Organization employee may respond to an applicant's Internet e-mail correspondence by telephone, fax, or other appropriate means.

Article 11. Interviews

Internet e-mail may be used to conduct an exchange of communications similar to those exchanged during telephone or personal interviews. In such cases, a paper copy of the Internet e-mail contents *MUST* be made and placed in the trademark application file wrapper.

Article 12. Documenting Search Strategies

All Trademark Organization users of the Internet for trademark application research shall document their search

strategies in accordance with established practices and procedures as set forth in TMEP § 1106.07(a).

Subparagraph A. Any information, which would aid a future searcher in locating the document retrieved through Internet research, should be included in the citation. Guidelines for citing electronic information can be found as an attachment to this policy.

Subparagraph B. When a document found on the Internet is not the original publication, then the Trademark Examining Attorney or Trademark Library staff shall pursue the acquisition of a copy of the originally published document or an original of the document or Web object in question for all references cited. Note: scanned images are considered to be a copy of the original publication. Electronic-only documents are original publications.

Article 13. Professional Development

The Internet is recognized as a tool for professional development. It may be useful for keeping informed of technological and legal developments. For example, use of the Internet for keeping abreast of conferences, seminars, and for receiving mail from appropriate list servers is acceptable.

Article 14. Policy Guidance and Clarifications

Within the Trademark Organization, any questions regarding the Internet usage policy should be directed to the user's immediate supervisor. Non-PTO personnel should direct their questions to the Office of the Assistant Commissioner for Trademarks.

Attachment—Guidelines for Citing Electronic Resources

The International Organization for Standardization (ISO) has created a standardized method for citing electronic resources. The formats are set forth in document ISO 690–2, which was published on November 15, 1997. The formats in ISO 690–2 are consistent with those proposed by the PTO in the fall of 1996.

ISO 690–2 references several ISO standards relating to documentation of publications. These are namely ISO 4:1984 Documentation—Rules for the abbreviation of title words and titles of publications; ISO 639:1988 Code for the representation of names of languages; ISO 690:1987 Documentation—Bibliographic references—content, form, and structure (the parent standard of 690–2); ISO 832:1994 Information and documentation—bibliographic description and references—Rules for the abbreviation of typical words; ISO 2108:1992 Information and documentation—International standard book numbering (ISBN); ISO 3297:1986 Documentation—International standard serial numbering (ISSN); ISO 5127–1:1983 Documentation and information—Vocabulary—Part 1: Basic concepts; ISO 8601:1988 Date elements and interchange formats—Information interchange—Representation of dates and times; ISO/TR 9544:1988 Information processing—computer-assisted publishing—Vocabulary; and ISO/IEC DIS 11179–3 Information technology—Coordination of data element standardization.

Elements of a Bibliographic Citation

The typical elements of a bibliographic citation are:

a. Author(s)—individual and corporate
b. Title
Titles fall into two general categories:
- Those that denote the source work (monograph, journal, conference, anthology/compilation, etc.)
- Those that describe the paper, chapter, or portion of work

c. Publication Date
d. Publisher
e. Report number/Series Number/Other identifying number
f. Editor(s)
g. Page numbers
h. Volume number
i. Issue number
j. Edition

A single print resource may not have all of the elements listed above; however, they will possess those which are appropriate to the work. In the case of monographs the volume and/or issue number may not be essential; as with journals the element for edition will be nonexistent. Therefore, it can be noted that even in traditional print publications the format of citations will vary with the resource being cited.

The same can be said for the realm of electronic publications. Electronic documents with originally published print equivalents will have most traditional bibliographic elements. Those that have no print equivalents will most likely not have traditional elements, even though they may look like and seem to possess many qualities of print publications.

Elements of Electronic Resource Citations

What makes the electronic resource different from the print resource? Initially it is safe to state that basic elements of a print citation are also applicable to the electronic form. These basic elements will include a title (even in the case of electronic mail in which the subject line can become the title element), originator (author), publisher, and publication date (although with electronic publications this element often raises problems for those verifying the document). Characteristics which are inherent to print publications but may not be to the electronic form include volumes, issues, and page numbers. The electronic resource will have elements in addition to the print resource. These elements include:

a. Type of Media
CD–ROM or other optical storage media
Diskette or other magnetic storage media
Online, including the Internet
b. Availability
The information required to retrieve the resource. In the case of online Internet resources this would include address-type information, along with directories, filenames, etc.
c. Date(s)
- Posted/Publication

The publication date is the date the author/originator affixes to the document. If that is not present, the date the system administrator or webmaster placed the document on the online system can be substituted.
- Accessed on

The date the user found and read the document. They may also have downloaded the document for personal use. This date will provide future readers with documentation as to what version/edition the document was on when it was accessed. If a document was altered subsequently there will not be confusion as to which document the user is referring to.

Proposed Formats

When an examiner retrieves a document from an electronic source, he/she will determine if it is useful and will cite it if appropriate. Assuming the examiner has located all pertinent bibliographic elements for a citation, the next task will be to format the citation.

Punctuation is an interesting problem for electronic documents. Traditionally, academics and library scientists have used punctuation as a means for separating bibliographic elements in a citation. In the case of retrieving electronic documents, punctuation becomes part of the citation. When expressing URLs, directories, filenames, etc., punctuation marks are required to create an accurate citation. Therefore, limit the amount of punctuation in the citation in order to avoid confusion.

Due to the ease and potential frequency of updates of electronic documents, ISO 690–2 recommends the use of month, date, year, and time of day on all date citations. There is no stated preference for dates using standard abbreviated months (Jan., Feb., Mar.) or complete numeric transcription (using standard format of year-month-date).

Additionally, standard abbreviations for journal titles, countries, provinces, etc. should be applied to electronic citations.

The following formats are proposals for how an examiner might cite an electronic document. However, all possible citation iterations are not included; this is a sampling.

CD–ROM, Diskette, Commercial Database

Author. (publication date). Title. Source (''source'' defined as the entire work, i.e. journal title). [Type of Medium], volume (issue), paging. Available:

Sample:

Smith, Joe. (January 1999). How to do an online search. Database. [CD–ROM], 17(2), 1–2. Available: UMI. File: General Periodicals Index.

FTP

Author. (publication date). Title. Source. [Type of Medium], volume (issue), paging. Available: Accessed on:

Sample:

Smith, Joe. (January 1999). How to do an online search. Database. [Online], 17(2), 1–2.

Available FTP: ftp.database.edu Directory: pubs/journals/database.online/vol17 File: 002dbs.txt Accessed on: February 1, 1999.

E-mail, Listservs, Usenet

Author. <author e-mail address> (publication/posted date). Title. Source (or Subject Line replaces title/source). [Type of Medium], volume (issue), paging. Available: (either list the listserv address or fill this position with ''personal e-mail'') Accessed on (or received on):

Sample:

Smith, Joe. <jsmith@database.org> (January 1999). How to do an online search. Database. [Online], 17(2), 1–2. Available: personal e-mail. Received on: February 1, 1999.

OR

Smith, Joe. <jsmith@database.org> Here's some search advice. [Online] Available: PACS-L@UHUPVM1.uh.edu Accessed on: February 1, 1999.

Gopher

Author. (publication date). Title. Source. [Type of Medium] volume (issue), paging. Available: Accessed on:

Sample:

Smith, Joe. (January 1999). How to do an online search. Database. [Online] 17(2), 1–2. Available Gopher: meckler.dbs.org /Database/pubs/journals/vol17/Howsearch Accessed on: February 1, 1999.

Web Site

Author. (publication date). Title. Source. [Type of Medium] volume (issue), paging. Available: Last update: Accessed on:

Sample:

Smith, Joe. (January 1999). How to do an online search. Database [Online] 17(2), 1–2. Available Web Site: www/meckler.database.org/Database/pbs/journals/vol17/002dbs.txt Last update: January 1999 Accessed on: February 1, 1999.

Examiners are encouraged to speak to a PTO librarian or technical information specialist when they find that crucial elements to the citation are lacking in their records. The information specialist will work with the examiner to verify dates, authors, and other elements as needed.

Dated: October 20, 1998.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 98–28572 Filed 10–23–98; 8:45 am]

BILLING CODE 3510–16–U

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 2:00 p.m., Monday, November 2, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–28760 Filed 10–22–98; 4:03 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11:00 a.m., Monday, November 6, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–28761 Filed 10–22–98; 4:03 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 2:00 p.m., Monday, November 9, 1998.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–28762 Filed 10–22–98; 4:03 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11:00 a.m., Monday, November 13, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–28763 Filed 10–22–98; 4:03 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 2:00 p.m., Monday, November 16, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–28764 Filed 10–22–98; 4:03 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Monday, November 20, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–28765 Filed 10–22–98; 4:02 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 2:00 p.m., Monday, November 23, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–28766 Filed 10–22–98; 4:02 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11:00 a.m., Monday, November 27, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–28767 Filed 10–22–98; 4:02 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 2:00 p.m., Monday, November 30, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–28768 Filed 10–22–98; 4:02 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 10, 1998.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address Pat__Sherrill@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: October 20, 1998.

Kent H. Hannaman,

Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision.

Title: Campus-Based Reallocation Form E40–4P.

Frequency: On occasion.

Affected Public: Business or other for-profit; Not-for-profit institutions; State, local or Tribal Gov't; SEAs or LEAs.

Reporting and Recordkeeping Burden:
Responses: 3,000.
Burden Hours: 500.

Abstract: The Reallocation Form is necessary to determine the funds available and to establish eligibility for the distribution of supplemental Federal Work-Study awards.

Office of Postsecondary Education

Type of Review: Extension.

Title: Federal Stafford Loan (Subsidized and Unsubsidized) Program Master Promissory Note.

Frequency: On occasion.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Reporting and Recordkeeping Burden:
Responses: 1,400,000.
Burden Hours: 1,400,000.

Abstract: This promissory note is the means by which a Federal Stafford Program Loan borrower promises to repay his or her loan.

[FR Doc. 98–28549 Filed 10–23–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 25, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address *Werfel__d@al.eop.gov*. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the

internet address *Pat__Sherrill@ed.gov*, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: October 20, 1998.

Kent H. Hannaman,

Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer.

Office of Bilingual Education and Minority Languages Affairs

Type of Review: New

Title: Application for Grants Under Bilingual Education: Comprehensive School Grants Program.

Frequency:

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't; SEAs or LEAs.

Reporting and Recordkeeping Burden:

Responses: 400.

Burden Hours: 48,000.

Abstract: The Department needs and uses this information to make grants. The respondents are local educational agencies and are required to provide this information in applying for grants.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, this 30-day public comment period notice will be the only public comment notice published for this information collection.

[FR Doc. 98–28548 Filed 10–23–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 25, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address *Werfel__d@al.eop.gov*. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address *Pat__Sherrill@ed.gov*, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: October 21, 1998.

Kent H. Hannaman,

Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Reinstatement

Title: Women's Educational Equity Act (WEEA).

Frequency: Annually.

Affected Public: Individuals or households; Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 200.

Burden Hours: 3,200.

Abstract: The WEEA Program promotes gender equity in education, especially for women and girls suffering from multiple forms of discrimination.

[FR Doc. 98–28588 Filed 10–23–98; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

[Docket No. PP–192]

Notice of Intent to Prepare an Environmental Impact Statement and Notice of Floodplain and Wetlands Involvement; NRG Energy, Inc.

AGENCY: Department of Energy (DOE).

ACTION: Notice of Intent to Prepare an Environmental Impact Statement and to Conduct Public Scoping Meetings.

SUMMARY: NRG Energy, Inc. (NRG) has applied to the Department of Energy

(DOE) for a Presidential permit to construct a 500,000-volt transmission line originating at the switchyard of the Palo Verde Nuclear Generating Station near Phoenix, Arizona, and extending approximately 177 miles to the southwest, where it would cross the United States (U.S.) border with Mexico in the vicinity of Calexico, California. From the border, NRG would extend the line approximately 2.5 miles into Mexico. DOE has determined that the issuance of the permit would constitute a major Federal action that may have significant impact upon the environment within the meaning of the National Environmental Policy Act of 1969 (NEPA). For this reason, DOE intends to prepare an environmental impact statement (EIS) to address reasonably foreseeable impacts from the proposed action and reasonable alternatives.

The purpose of this Notice of Intent is to inform the public about the proposed action, announce the plans for three public scoping meetings in the vicinity of the proposed transmission line, invite public participation in the scoping process, and solicit public comments for consideration in establishing the scope and content of the EIS. Because the proposed project may involve an action in floodplains or wetlands, the EIS will include a floodplain and wetlands assessment and floodplain statement of findings in accordance with DOE regulations for compliance with floodplains and wetlands environmental review requirements (10 CFR Part 1022).

DATES: DOE invites interested agencies, organizations, and members of the public to submit comments or suggestions to assist in identifying significant environmental issues and in determining the appropriate scope of the EIS. The public scoping period starts with the publication of this Notice in the **Federal Register** and will continue until November 25, 1998. Written and oral comments will be given equal weight, and DOE will consider all comments received or postmarked by November 25, 1998, in defining the scope of this EIS. Comments received or postmarked after that date will be considered to the extent practicable.

Dates for the public scoping meetings are:

1. November 16, 1998, 2:00 P.M. to 4:00 P.M., and 7:00 P.M. to 9:00 P.M., Phoenix, Arizona.
2. November 17, 1998, 2:00 P.M. to 4:00 P.M., and 7:00 P.M. to 9:00 P.M., Yuma, Arizona.
3. November 18, 1998, 4:00 P.M. to 7:00 P.M., El Centro, California.

DOE will publish additional notices of the date, times, and location of the scoping meetings in local newspapers in advance of the scheduled meetings. Any necessary changes will be announced in the local media.

Requests to speak at a public scoping meeting(s) should be received by Mrs. Ellen Russell at the address indicated below on or before November 12, 1998. Requests to speak may also be made at the time of registration for the scoping meeting(s). However, persons who submitted advance requests to speak will be given priority if time should become limited during the meeting.

ADDRESSES: Written comments or suggestions on the scope of the EIS, and requests to speak at the scoping meeting(s), should be addressed to: Mrs. Ellen Russell, Office of Fossil Energy (FE–27), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350; Phone 202–586–9624, facsimile: 202–287–5736, or by electronic mail at Ellen.Russell@hq.doe.gov.

The locations of the scoping meetings are:

1. Embassy Suites Hotel, 1515 N. 44th Street, Phoenix, AZ
2. Yuma Civic & Convention Center, 1440 Desert Hills Drive, Yuma, AZ
3. Vacation Inn/Scribbles, 2015 Cottonwood Circle, El Centro, CA

FOR FURTHER INFORMATION CONTACT: For general information on the DOE NEPA review process, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0119; Phone: 202–586–4600 or leave a message at 800–472–2756; facsimile: 202–586–7031.

For information on the proposed project or to receive a copy of the Draft EIS when it is issued, contact Mrs. Russell at the address above.

SUPPLEMENTARY INFORMATION:

Background and Need for Agency Action

Executive Order 10485, as amended by Executive Order 12038, requires that a Presidential permit be issued by DOE before electric transmission facilities may be constructed, connected, operated, or maintained at the U.S. international border. The Executive Order provides that a Presidential permit may be issued after a finding that the proposed project is consistent with the public interest. In determining consistency with the public interest, DOE considers the impact of the project on the reliability of the U.S. electric power system and on the environment. The regulations implementing the Executive Order have been codified at 10 CFR 205.320–205.329. Issuance of the permit indicates that there is no Federal objection to the project, but does not mandate that the project be completed.

On August 17, 1998, NRG, an independent power producer and wholly-owned subsidiary of Northern States Power Company, filed an application for a Presidential permit with the Office of Fossil Energy of DOE. NRG proposes to construct approximately 177 miles of 500,000-volt transmission line from the switchyard adjacent to the Palo Verde Nuclear Generating Station, located 30 miles west of Phoenix, Arizona, to the U.S.-Mexico border in the vicinity of Calexico, California. South of the border, NRG would construct an additional 2.5 miles of transmission line to the Cetys Substation, located east of Mexicali, Mexico, and owned by the Comision Federal de Electricidad (CFE), the national electric utility of Mexico.

The transmission line proposed by NRG would be designed and constructed with a nominal capacity of 1000 megawatts of electrical power but would be restricted to a 600-megawatt capacity under certain conditions. All but 2.5 miles of the U.S. portion of the proposed transmission line is expected to be located within an existing utility corridor designated by the Bureau of Land Management. However, the applicant would need to obtain approximately 4,300 acres of additional right-of-way from public and private landowners.

The route proposed by NRG would parallel the existing Southwest Powerlink 500,000-volt transmission line beginning at the Palo Verde Nuclear Generating Station Switchyard. The route would continue southwest, crossing the Gila Bend Mountains approximately one mile north of the Signal Mountain Wilderness Area. The route would traverse the Muggins Mountains on the northern boundary of the Muggins Mountains Wilderness Area, and 8.2 miles of the Army's Yuma Proving Grounds. The line would cross the Colorado River from Arizona into California and proceed northwest, crossing the northeast corner of the Fort Yuma-Quechan Indian Reservation for 1.7 miles before turning southwest and paralleling the Bureau of Land Management-designated utility corridor through the Imperial Sand Dunes Recreation Area. The route would continue north of the northern boundary of the Indian reservation, about one mile south of the Pichacho Peak Wilderness

Area and then turn to a southeastern direction, crossing 2.1 miles of the northwest corner of the Fort Yuma-Quechan Indian Reservation. The route would then continue west between the U.S.-Mexico boundary and the All-American Canal. At the Hemlock Canal, the route would turn south, following the Hemlock Canal alignment for 2.5 miles to the border. The proposed route would cross approximately 25 linear miles of 100-year floodplains.

Project activities would include clearing rights-of-way and access roads, digging tower footings, setting transmission towers, hanging transmission wires, and modifying existing substation(s).

The NRG application, which can be downloaded in its entirety (including maps) from the Office of Fossil Energy's web site (www.fe.doe.gov; choose regulatory, then electricity), states that there are no firm contracts in place for the sale of power to Mexico using the proposed transmission line. Prior to commencing electricity exports to Mexico using the proposed line, NRG, or any other electricity exporter, must obtain an electricity export authorization from DOE pursuant to section 202(e) of the Federal Power Act.

Identification of Environmental Issues

A purpose of this notice is to solicit comments and suggestions for consideration in the preparation of the EIS. As background for public comment, this notice contains a list of potential environmental issues that DOE has tentatively identified for analysis. This list is not intended to be all-inclusive or to imply any predetermination of impacts. Following is a preliminary list of issues that may be analyzed in the EIS:

(1) Socioeconomic impacts of development of the land tracts and their subsequent uses;

(2) Impacts to protected, threatened, endangered, or sensitive species of animals or plants, or their critical habitats;

(3) Impacts to floodplains and wetlands;

(4) Impacts to cultural or historic resources;

(5) Impacts to human health and safety;

(6) Impacts on air, soil, and water;

(7) Visual impacts;

(8) Disproportionately high and adverse impacts to minority and low-income populations; and

(9) Environmental impacts within Mexico.

The EIS will also consider alternatives to the proposed transmission line, including:

(1) No Action Alternative: The EIS will analyze the impacts associated with ''no action.'' Since the proposed action is the issuance of a Presidential permit for the construction of the proposed transmission line, ''no action '' means that the permit would not be issued. However, not issuing the permit would not necessarily imply maintenance of the status quo. It is possible that the applicant and/or the Mexican government may take other actions if the proposed transmission line is not built. The No Action Alternative will address the environmental impacts that are reasonably foreseeable to occur if the Presidential permit is not issued, to the extent practicable;

(2) Alternative transmission line routes;

(3) Construction of a powerplant in the U.S. closer to the U.S.-Mexico border with a shorter transmission line extending to the border, an alternative concept for supplying electric power to the target region.

Scoping Process

Interested parties are invited to participate in the scoping process both to refine the preliminary alternatives and environmental issues to be analyzed in depth, and to eliminate from detailed study those alternatives and environmental issues that are not significant or pertinent. The scoping process is intended to involve all interested agencies (Federal, state, county, and local), public interest groups, Native American Tribes, businesses, and members of the public. Potential Federal cooperating agencies include the U.S. Department of the Interior (including Bureau of Land Management, Bureau of Indian Affairs, and the Fish and Wildlife Service) and the International Boundary and Water Commission.

Public scoping meetings will be held at the locations, dates, and times indicated above. These scoping meetings will be informal and conducted as a discussion between attendees and DOE. The DOE presiding officer will establish only those procedures needed to ensure that everyone who wishes to speak has a chance to do so and that DOE understands all issues and comments. Speakers will be allocated approximately 10 minutes for their oral statements. Depending upon the number of persons wishing to speak, DOE may allow longer times for representatives of organizations. Consequently, persons wishing to speak on behalf of an organization should identify that organization in their request to speak. Persons who have not submitted a request to speak in advance may register to speak at the scoping meeting(s). However, advance requests to speak are encouraged. Should any speaker desire to provide for the record further information that cannot be presented within the designated time, such additional information may be submitted in writing by the date listed above in the **DATES** section. Both oral and written comments will be considered and given equal weight by DOE. Meetings will commence at the times specified above and will continue until all those present who wish to participate have had an opportunity to do so.

Draft EIS Schedule and Availability

The Draft EIS is scheduled for completion by March 1999, at which time its availability will be announced in the **Federal Register** and public comments again will be solicited.

Those individuals who do not wish to submit comments or suggestions at this time but who would like to receive a copy of the Draft EIS for review and comment when it is issued should notify Mrs. Russell at the address above.

The Draft EIS will be made available for public inspection at several public libraries or reading rooms in Arizona and California. A notice of these locations will be provided in the **Federal Register** at a later date.

Issued in Washington, D.C. on October 22, 1998.

Peter N. Brush,

Acting Assistant Secretary, Environment, Safety and Health.

[FR Doc. 98–28703 Filed 10–23–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Competitive Financial Assistance for the Office of Energy Efficiency and Renewable Energy

AGENCY: U.S. Department of Energy.

ACTION: Notice of competitive financial assistance solicitation.

SUMMARY: The Department of Energy announces a competitive solicitation for applications for grants and cooperative agreements for information dissemination, public outreach, training, and related technical analysis and technical assistance activities involving renewable energy and energy conservation. It is estimated that funding of approximately $5.5 million will be available under renewable energy programs and $6.5 million will be available under energy conservation programs for awards under this

solicitation in fiscal year 1999. Areas of interest involving renewable energy include biomass, geothermal, hydrogen, photovoltaic, solar building, concentrating solar power, and wind technologies. Conservation areas of interest include energy efficiency in transportation, buildings, industry, and the federal sector. The awards may be for a period of six months to four years. Proposals will be subject to the objective merit review procedures for the Office of Energy Efficiency and Renewable Energy.

ADDRESSES: The formal solicitation is expected to be issued in late October 1998. It will be available as solicitation number DE-PS01–99EE10649 through the Department of Energy's ''Current Business Opportunities at Headquarters Procurement Services'' Homepage located at www.pr.doe.gov/solicit.html. Interested applicants that do not have Internet access may request a copy of the solicitation by sending a request with a virus-free diskette and self-addressed, stamped, diskette mailer to U.S. Department of Energy, Office of Headquarters Procurement Services, Attn: Document Control Specialist, HR–543, 1000 Independence Ave., SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Ms. Jackie Kniskern, HR–542, Office of Headquarters Procurement Services, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, D.C. 20585, telephone number (202) 426–0046, e-mail at jacqueline.kniskern@hq.doe.gov. E:mail is the preferred method for submission of comments and/or questions.

SUPPLEMENTARY INFORMATION: The Office of Energy Efficiency and Renewable Energy supports the Department of Energy's strategic objectives of increasing the efficiency and productivity of energy use, while limiting environmental impacts; reducing the vulnerability of the U.S. economy to disruptions in energy supplies; ensuring that a competitive electric utility industry is in place that can deliver adequate and affordable supplies with reduced environmental impacts; supporting U.S. energy, environmental, and economic interests in global markets; and delivering leading-edge technologies. A key component of this program is the support of information dissemination, public outreach, training and related technical analysis and technical assistance activities to: (1) stimulate increased energy efficiency in transportation, buildings, and industry and increased use of renewable energy; and (2) accelerate the adoption of new technologies to increase energy efficiency and the use of renewable energy. The purpose of this solicitation is to further these objectives through financial assistance in the following areas:

Office of Utility Technologies—The primary mission of this Office is to lead the national effort to develop solar and other renewable energy technologies and to accelerate their acceptance and use on a national and international level. The Office also develops advanced high temperature superconducting power equipment and energy storage systems, addresses advanced technology needs for transmission and distribution systems, and provides information and technical assistance on electric utility restructuring issues. Financial assistance applications will be requested for information dissemination, public outreach, and related technical analysis activities involving specific renewable technologies (e.g., geothermal, concentrating solar power, biopower, photovoltaic, wind, hydrogen) as well as activities that involve multiple technologies within the Office's purview. Proposals also will be requested to perform other activities, such as information dissemination, technical assistance, and outreach relating to electric utility restructuring.

Office of Transportation Technologies—The mission of this Office is to support the development and use of advanced transportation vehicles and alternative fuel technologies which will reduce energy demand, particularly for petroleum; reduce criteria pollutant emissions and greenhouse gas emissions; and enable the U.S. transportation industry to sustain a strong competitive position in domestic and world markets. Financial assistance applications will be requested to support national and regional biomass resource assessments; technical analysis and outreach related to energy and environmental impacts of advanced transportation technologies; and information dissemination and outreach to promote the use of alternative fuel vehicles.

Office of Industrial Technologies—The mission of this Office is to improve the energy efficiency and pollution prevention performance of U.S. industry. The Office has a particular focus on several key industries, including the steel, aluminum, glass, metal casting, forest products, chemicals, petroleum, agriculture, and mining industries. Financial assistance applications will be requested to support specific information dissemination and related technical analysis activities associated with the development and adoption of energy efficient technologies in the industrial sector. Many of these issues involve the examination of changes in the marketplace; differing needs associated with small and medium-sized businesses; competing technologies; institutional and infrastructure issues; and energy efficiency activities in other countries and their impact or potential for U.S. technologies.

Office of Building Technology, State and Community Programs—The mission of this Office is to develop, promote, and integrate energy technologies and practices to make buildings more efficient and affordable and communities more liveable. Financial assistance applications will be requested to support information dissemination, technical analysis, and outreach activities designed to facilitate the adoption of energy efficiency and renewable energy in residential and commercial buildings and communities. For example, proposed projects may include the development and dissemination of educational tools and training programs that educate the general public and stakeholders about the benefits of employing energy efficient technologies and practices in buildings and communities.

Federal Energy Management Program—The mission of this Program is to assist agencies in achieving the Federal energy management goals and to disseminate information to States, local governments, and the public on innovative approaches to the use of energy. Financial assistance applications will be requested to support several specific program areas, such as a national lighting certification program for lighting professionals.

The Office of the Assistant Secretary for Energy Efficiency and Renewable Energy has overall management responsibility for the entire Office of Energy Efficiency and Renewable Energy, including the Office of Utility Technologies, the Office of Transportation Technologies, the Office of Industrial Technologies, the Office of Building Technology, State and Community Programs, and the Federal Energy Management Program. Financial assistance applications will be requested to support information dissemination, outreach, training, and related technical analysis and technical assistance activities involving: (1) multiple energy efficiency sectors; (2) both renewable energy and energy efficiency sectors; (3) international efforts; and (4) other projects which stimulate increased energy efficiency

and increased use of renewable energy or accelerate the adoption of new technologies to increase energy efficiency and the use of renewable energy.

Additional information about the programs of the Office of Energy Efficiency and Renewable Energy can be obtained at the Office's Internet site at www.eren.doe.gov/ee.html.

Pursuant to 10 CFR 600.9, a draft solicitation, which will include greater detail about specific program areas of interest, application instructions, and evaluation criteria, is expected to be issued in late October 1998. Comments will be accepted for two weeks after the release of the draft solicitation.

Issued in Washington, D.C. on October 20, 1998.

Carol M. Rueter,

Acting Director, Program Services Division, Office of Headquarters Procurement Services.

[FR Doc. 98–28592 Filed 10–23–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–6–000]

Bear Swap I LLC; Notice of Extension of Time

October 20, 1998.

The Notice of Filing in the above-mentioned case was issued on October 8, 1998 (63 FR 56020, October 20, 1998) with a deadline for filing protests and interventions of October 19, 1998. Since the publication of this notice was after the deadline, we are extending the time to file protests and interventions to October 30, 1998.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–28573 Filed 10–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–538–000]

Midwestern Gas Transmission Company; Notice of Site Visit

October 20, 1998.

On October 28, 1998, the staff of the Office of Pipeline Regulation will be conducting an environmental site visit of Midwestern Gas Transmission Company's Grain Processing Corporation Sales Tap Project in Knox and Daviess Counties, Indiana. All parties may attend. Those planning to attend must provide their own transportation.

For further information about where the site inspection will begin, please contact Paul McKee at (202) 208–1088.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–28577 Filed 10–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–17–000]

Panhandle Eastern Pipe Line Company; Notice of Request Under Blanket Authorization

October 20, 1998.

Take notice that on October 13, 1998, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP99–17–000 a request pursuant to Sections 157.205, 157.211 and .216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211 and 157.216) for authorization to upgrade the Central Illinois Public Service (CIPSCO) Quincy M&R Station, an existing delivery point located in Adams County, Illinois, under Panhandle's blanket certificate issued in Docket No. CP83–83–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Panhandle states that it proposes to replace the regulators associated with the existing M&R Station with short lengths of pipe so as to allow an increase in pressure from 90 psig to 240 psig. Panhandle also states the upgrade facilities will enable the above-ground meter runs to deliver natural gas supplies to CIPSCO at a pressure sufficient to accommodate CIPSCO's increased customer pressure requirements, and that the maximum capacity of the Quincy M&R Station will not change as a result of these proposed modifications. Panhandle further states that the proposed upgrade of the Qunicy M&R Station will not increase the existing firm entitlement of CIPSCO under its currently effective service agreements, but will better enable CIPSCO to provide its customers with requested delivery pressures.

Panhandle states the estimated cost to upgrade the existing facilities is $11,600, and the CIPSCO will reimburse Panhandle for the cost of modification.

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 National Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–28574 Filed 10–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–193–000, et al.]

Entergy Services, Inc., et al.; Electric Rate and Corporate Regulation Filings

October 19, 1998.

Take notice that the following filings have been made with the Commission:

1. Entergy Services, Inc.

[Docket No. ER99–193–000]

Take notice that on October 14, 1998, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Firm Point-to-Point Transportation Agreement between Entergy Services, Inc., as agent for the Entergy Operating Companies, and PG&E Energy Trading—Power, L.P.

Comment date: November 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. California Power Exchange Corporation

[Docket Nos. EC96–19–037 and ER96–1663–038]

Take notice that on October 13, 1998, the California Power Exchange Corporation (PX), filed revised sheets to its tariff in compliance with the Commission's September 28, 1998, order in the captioned dockets.

Comment date: November 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Niagara Mohawk Power Corporation

[Docket No. ER99–194–000]

Take notice that on October 14, 1998, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing an unsigned pro forma Service Agreement for Niagara Mohawk Power Corporation's Scheduling and Balancing Services Tariff for New Energy Holdings, Inc. This Service Agreement implements the terms of the proposed Tariff, which would establish a system of economic incentives designed to induce users of Niagara Mohawk's electric transmission system to match actual deliveries of electricity to delivery schedules provided under Niagara Mohawk's Open Access Transmission Tariff (OATT).

A copy of the filing was served upon New Energy Holdings, Inc., and the New York Public Service Commission.

Comment date: November 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Niagara Mohawk Power Corporation

[Docket No. ER99–195–000]

Take notice that on October 14, 1998, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing an unsigned pro forma Service Agreement for Niagara Mohawk Power Corporation's Scheduling and Balancing Services Tariff for USGen Power Services, LP. This Service Agreement implements the terms of the proposed Tariff, which would establish a system of economic incentives designed to induce users of Niagara Mohawk's electric transmission system to match actual deliveries of electricity to delivery schedules provided under Niagara Mohawk's Open Access Transmission Tariff (OATT).

A copy of the filing was served upon USGen Power Services, LP and the New York Public Service Commission.

Comment date: November 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. PJM Interconnection, L.L.C.

[Docket No. ER99–196–000]

Take notice that on October 14, 1998, PJM Interconnection, L.L.C. (PJM), filed amendments to the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., which sets forth the procedures by which PJM will operate PJM Capacity Credit Markets.

PJM requests an effective date of October 15, 1998, for the amendments.

Copies of this filing were served on all members of PJM and each state electric utility regulatory commission in the PJM Control Area.

Comment date: November 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Mississippi Power Company

[Docket No. ER99–197–000]

Take notice that on October 14, 1998, Mississippi Power Company and Southern Company Services, Inc., its agent, tendered for filing a Service Agreement, pursuant to the Southern Companies Electric Tariff Volume No. 4—Market Based Rate Tariff, with South Mississippi Electric Power Association for the Hamill Farm Road Delivery Point to Singing River Electric Power Association. The agreement will permit Mississippi Power to provide wholesale electric service to South Mississippi Electric Power Association at a new service delivery point.

Copies of the filing were served upon South Mississippi Electric Power Association, the Mississippi Public Service Commission, and the Mississippi Public Utilities Staff.

Comment date: November 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Constellation Energy Source, Inc.

[Docket No. ER99–198–000]

Take notice that on October 14, 1998, Constellation Energy Source, Inc. (CES), filed with the Federal Energy Regulatory Commission an application for authority to charge market-based rates and for certain waivers and blanket approvals.

CES has requested waiver of notice to permit its proposed rate schedule to become effective on October 15, 1998, one day after the date of filing.

Comment date: November 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Niagara Mohawk Power Corporation

[Docket No. EC99–4–000]

Take notice that on October 13, 1998, Niagara Mohawk Power Corporation (Niagara Mohawk) submitted for filing, pursuant to section 203 of the Federal Power Act, and Part 33 of the Commission's Regulations, an application for authorization to purchase all the securities of Beebee Island Corporation and Moreau Manufacturing Corporation, public utilities of which Niagara Mohawk presently is the majority shareholder owning 82.8% and 66.67% respectively of the outstanding shares of these companies. Copies of the filing have been served on the New York State Public Service Commission, Beebee Island Corporation, and Moreau Manufacturing Corporation.

Comment date: November 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Central Illinois Light Company

[Docket No. ER99–199–000]

Take notice that on October 14, 1998, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61602, tendered for filing with the Commission a substitute Index of Point-To-Point Transmission Service Customers under its Open Access Transmission Tariff and service agreements for two new customers, Duke Power, a division of Duke Energy Corporation and Enron Power Marketing, Inc.

CILCO requested an effective date of October 7, 1998.

Copies of the filing were served on the affected customers and the Illinois Commerce Commission.

Comment date: November 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. IEC Operating Companies

[Docket No. ER98–4054–001]

Take notice that on October 14, 1998, the IEC Operating Companies submitted a System Coordination and Operating Agreement, revised in compliance with the Commission's order issued September 29, 1998 in this proceeding,

Comment date: November 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. California Independent System Operator Corporation

[Docket Nos. ER99–189–000]

Take notice that on October 14, 1998, the California Independent System Operator Corporation (ISO), tendered for filing an amendment to Appendix A to the Responsible Participating Transmission Owner Agreement between the ISO and the Southern California Edison Company (SCE). The ISO states that the amendment revises the Appendix to remove the City of Anaheim, the City of Azusa, and the City of Banning.

The ISO states that this filing has been served on all parties listed on the Restricted Service List in the above-referenced dockets.

Comment date: November 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Entergy Services, Inc.

[Docket No. ER99–190–000]

Take notice that on October 14, 1998, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc.,

Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement and a Short-Term Firm Point-to-Point Transportation Agreement both between Entergy Services, Inc., as agent for the Entergy Operating Companies, and Statoil Energy Trading, Inc.

Comment date: November 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, Southwestern Electric Power Company

[Docket No. ER99–191–000]

Take notice that on October 14, 1998, Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company and West Texas Utilities Company (collectively, the CSW Operating Companies), tendered for filing a service agreement establishing Western Farmers Electric Cooperative (Western) as a customer under the CSW Operating Companies' market-based rate power sales tariff.

The CSW Operating Companies request an effective date of September 15, 1998, for the agreement with Western and, accordingly, seek waiver of the Commission's notice requirements.

The CSW Operating Companies state that a copy of the filing was served on Western.

Comment date: November 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Southern Company Services, Inc.

[Docket No. ER99–192–000]

Take notice that on October 14, 1998, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company (MPC), and Savannah Electric and Power Company (collectively referred to as Southern Company) filed i) a network integration transmission service agreement between SCS, as agent for Southern Company, and Southern Wholesale Energy, a Department of SCS, as agent for MPC, and ii) a service agreement for non-firm point-to-point transmission service executed by SCS, as agent for Southern Company, and Merchant Energy Group of the Americas, Inc., under the Open Access Transmission Tariff of Southern Company (FERC Electric Tariff, Original Volume No. 5).

Comment date: November 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Virginia Electric and Power Company

[Docket No. ER99–200–000]

Take notice that on October 14, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service with Consumers Energy Company (Consumers) and The Detroit Edison Company (Edison, which with Consumers shall be referred to collectively as the Michigan Companies or Transmission Customer) under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide firm point-to-point service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon Consumers Energy Company, The Detroit Edison Company, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: November 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Western Resources, Inc.

[Docket No. ER99–201–000]

Take notice that on October 14, 1998, Western Resources, Inc., tendered for filing agreements between Western Resources and DTE Energy Trading, Inc. Western Resources states that the purpose of the agreement is to permit the customer to take service under Western Resources' market-based power sales tariff on file with the Commission. The agreement is proposed to become effective September 15, 1998.

Copies of the filing were served upon DTE Energy Trading, Inc., and the Kansas Corporation Commission.

Comment date: November 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Entergy Services, Inc.

[Docket No. ER99–218–000]

Take notice that on October 8, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Power and Energy Agreement between Entergy Services, as agent for the Entergy Operating Companies, and the Municipal Energy Agency of Mississippi for the sale of power under Entergy Services' Rate Schedule SP.

Comment date: October 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Sierra Pacific Power Company and Nevada Power Company

[Docket No. EC99–1–000]

Take notice that on October 9, 1998, Sierra Pacific Power Company (Sierra) and Nevada Power Company (Nevada Power) (collectively, Sierra and Nevada Power are referred to herein as the Applicants), filed corrections to pages 5 and 18 of their Application. On those pages, it is stated that the expected in-service date for Sierra's Alturas Intertie project is the end of 1999. The actual expected in-service date, as stated at page 5 of Mr. Oldham's testimony (Exhibit SPNP–9), is December of 1998. Applicants also filed workpapers of Dr. Fox-Penner. These workpapers consist of a memorandum explaining the organization of the workpapers and seven binders of the workpapers. Also included are two CD–ROMs with data in electronic format.

Comment date: December 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–28544 Filed 10–23–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 637]

Public Utility District No. 1 of Chelan County, Washington; Notice of Scoping Meetings and Project Facilities Tour Pursuant to the National Environmental Policy Act of 1969 for an Applicant Prepared Environmental Assessment

October 20, 1998.

The Commission's regulations allow applicants the option of preparing their own Environmental Assessment (EA) for hydropower projects, and filing the EA with their application as part of an alternative licensing procedure.[1] On July 6, 1998 the Commission approved the use of an alternative licensing procedure in the preparation of a new license application for Public Utility District No. 1 of Chelan County's (Chelan PUD), Lake Chelan Project, No. 637.

The alternative procedures include provisions for the distribution of an initial information package, and for the cooperative scoping of environmental issues and needed studies. On October 5, 1998, Chelan PUD distributed their initial information package which included an initial consultation document (ICD) and Scoping Document 1 (SD1).[2] Three public meetings will be held to discuss these documents.

ICD Meeting and Project Tour

Chelan PUD will hold a public meeting to discuss their ICD on November 18, 1998. In this meeting, Chelan PUD will give an overview of the existing project facilities and operation, discuss what is currently known about environmental resources at the project, and discuss how those resources are currently being managed. A project facilities tour will also be conducted on the same day. The tour will include stops at the dam, powerhouse, and the lower end of the project bypassed reach.

The times and locations of the ICD meeting and project facilities tour are:

Initial Information Meeting

November 18, 1998, 10:00 am to 1:00 pm, Carvel Resort, 322 West Woodin Avenue, Chelan, WA 98816, (509) 682–2582

Project Facilities Tour

November 18, 1998, 2:00 pm to 5:00 pm, Meet at north side of the project dam (for more information call Gregg Carrington at (509) 663–8121)

Scoping Meetings

Chelan PUD will hold public scoping meetings on November 18 and 19, 1998, pursuant to the National Environmental Policy Act (NEPA) of 1969. At the scoping meetings, Chelan PUD will: (1) summarize the environmental issues tentatively identified for analysis in the EA; (2) outline any resources they believe would not require a detailed analysis; (3) identify reasonable alternatives to be addressed in the EA; (4) solicit from the meeting participants all available information, especially quantitative data, on the resources at issue; and (5) encourage statements from experts and the public on issues that should be analyzed in the EA.

Although Chelan PUD's intent is to prepare an EA, there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, this meeting will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

The times and locations of the scoping meetings are:

Evening Scoping Meeting

November 18, 1998, 6:00 pm to 9:00 pm, Caravel Resort, 322 West Woodin Avenue, Chelan, WA 98816, (509) 682–2582

Morning Scoping Meeting

November 19, 1998, 10:00 am to 1:00 pm, Caravel Resort, 322 West Woodin Avenue, Chelan, WA 98816, (509) 682–2582

All interested individuals, organizations, and agencies are invited and encouraged to attend any or all of the meetings to assist in identifying and clarifying the scope of environmental issues that should be analyzed in the EA.

Scoping Meeting Procedures

The meetings will be conducted according to the procedures used at Commission scoping meetings. Because this meeting will be a NEPA scoping meeting under the APEA process, the Commission does not intend to conduct a NEPA scoping meeting after Chelan PUD's application and EA are filed with the Commission. Instead, Commission staff will attend the meetings on November 18 and 19, 1998.

Commenting Deadline

Both scoping meetings will be recorded by a stenographer, and the transcripts will become part of the formal record of the proceedings for this project. Those who choose not to speak during the scoping meetings may instead submit written comments on the project. Written comments should be mailed or e-mailed to: Mr. Gregg Carrington, Public Utility District No. 1 of Chelan County, Washington, P.O. Box 1231, Wenatchee, WA 98807–1231, gregg@chelanpud.org.

All correspondence should be postmarked no later than January 19, 1999. Comments should show the following caption on the first page: Scoping Comments, Lake Chelan Hydroelectric Project, Project No. 637.

For further information please contact Gregg Carrington of Chelan PUD at (509) 663–8121 or Vince Yearick of the Commission at (202) 291–3073.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–28575 Filed 10–23–98; 8:45 am]

BILLING CODE 6717–01–M

[1] 81 FERC ¶ 61,103 (1997).

[2] Copies of these documents can be obtained by calling Rosana Sokolowski at 509–663–8121 or via the Chelan PUD web site located at http://www.chelanpud.org/relicense.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File Application for New License

October 20, 1998.

Take notice that the following notice of intent has been filed with the Commission and is available for public inspection:

a. *Type of filing:* Notice of Intent to File Application for New License.

b. *Project No.:* 637.

c. *Date filed:* October 5, 1998.

d. *Submitted By:* Public Utility District No. 1 of Chelan County, Washington, the current licensee.

e. *Name of Project:* Lake Chelan Hydroelectric Project.

f. *Location:* On the Chelan River, near the City of Chelan in Lewis County, Washington. Federal lands within the project boundary include 361.42 acres of the Wenatchee National Forest, and 104.10 acres of the Lake Chelan National Recreation Area.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act, 18 CFR 16.6 of the Commission's regulations.

h. *Effective date of current license:* May 1, 1981.

i. *Expiration date of current license:* March 31, 2004.

j. The 48-megawatt project consists of a 40-foot-high dam on the Chelan River at the lower end of Lake Chelan, a 2.2-mile-long steel and concrete tunnel, and a powerhouse located near the confluence of the Chelan and Columbia Rivers.

k. Pursuant to 18 CFR 16.7, information on the project is available at: Public Utility District No. 1 of Chelan County, Washington, ATTN: Rosana Sokolowski, 327 North Wenatchee Avenue, Wenatchee, WA 98801, Phone: 509–663–8121; FAX: 509–664–2881; E-mail: rosana@chelanpud.org or via the internet at www.chelanpud.org/relicense.

l. FERC contact: Vince Yearick (202) 219–3073.

m. Pursuant to 18 CFR 16.9(b)(1) each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by March 31, 2002.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–28576 Filed 10–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

October 21, 1998.

The Following Notice of Meeting is Published Pursuant to section 3(A) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: October 28, 1998, 10:00 a.m.

PLACE: Room 2C, 888 First Street, N.E., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*Note—Items Listed on the Agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: David P. Boergers, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the commission. It does not include a listing of all papers relevant to the items on the agenda; However, all public documents may be examined in the reference and information center.

Consent Agenda—Hydro; 707th Meeting—October 28, 1998; Regular Meeting (10:00 a.m.)

CAH–1.
OMITTED

CAH–2.
DOCKET # P–2525, 006, WISCONSIN PUBLIC SERVICE CORPORATION
OTHER #S P–2522, 005, WISCONSIN PUBLIC SERVICE CORPORATION
P–2546, 002, WISCONSIN PUBLIC SERVICE CORPORATION
P–2560, 002, WISCONSIN PUBLIC SERVICE CORPORATION
P–2581, 003, WISCONSIN PUBLIC SERVICE CORPORATION
P–2595, 013, WISCONSIN PUBLIC SERVICE CORPORATION

CAH–3.
DOCKET # P–2579, 013, INDIANA MICHIGAN POWER COMPANY
OTHER #S P–2579, 011, INDIANA MICHIGAN POWER COMPANY

CAH–4.
DOCKET # P–11468, 002, NORTH SIDE CANAL COMPANY

CAH–5.
DOCKET # P–5, 029, THE MONTANA POWER COMPANY AND CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION
OTHER #S P–5, 030, THE MONTANA POWER COMPANY AND CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION

CAH–6.
DOCKET # P–460, 010, CITY OF TACOMA, WASHINGTON

CAH–7.
DOCKET # P–1494, 140, GRAND RIVER DAM AUTHORITY

Consent Agenda—Electric

CAE–1.
DOCKET # EC96–19, 029, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
OTHER #S ER96–1663, 030, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

CAE–2.
DOCKET # ER98–4421, 000, CONSUMERS ENERGY COMPANY

CAE–3.
DOCKET # ER98–4499, 000, OCEAN STATE POWER AND OCEAN STATE POWER II

CAE–4.
DOCKET # ER98–4497, 000, SEMPRA ENERGY TRADING CORPORATION
OTHER #S ER98–4498, 000 SAN DIEGO GAS & ELECTRIC COMPANY

CAE–5.
DOCKET # ER98–4426, 000, PUBLIC SERVICE COMPANY OF COLORADO

CAE–6.
DOCKET# ER98–4400, 000, PITTSFIELD GENERATING COMPANY, L.P.

CAE–7.
DOCKET# EL97–43, 000, QST ENERGY TRADING INC. V. CENTRAL ILLINOIS PUBLIC SERVICE COMPANY AND UNION ELECTRIC COMPANY

CAE–8.
DOCKET# ER97–4573, 000, FLORIDA POWER CORPORATION

CAE–9.
DOCKET# ER95–112, 000, ENTERGY SERVICES, INC.
OTHER#S EL95–17, 000, ENTERGY SERVICES, INC. AND ENTERGY POWER, INC.
EL95–17, 002, ENTERGY SERVICES, INC. AND ENTERGY POWER, INC.
ER95–112, 002, ENTERGY SERVICES, INC.
ER95–112, 007, ENTERGY SERVICES, INC.
ER95–1001, 001, ENTERGY SERVICES, INC.
ER95–1615, 002, ENTERGY POWER MARKETING CORPORATION
ER96–586, 000, ENTERGY SERVICES, INC.
ER96–586, 002, ENTERGY SERVICES, INC.
ER96–2709, 001, ENTERGY SERVICES, INC.

CAE–10.
DOCKET# ER98–3853, 000, NEW ENGLAND POWER POOL

CAE–11.
DOCKET# ER91–505, 001, PACIFIC GAS AND ELECTRIC COMPANY
OTHER#S EL92–18, 000, PACIFIC GAS AND ELECTRIC COMPANY

CAE–12.
DOCKET# ER98–12, 000, SIERRA PACIFIC POWER COMPANY

CAE–13.
DOCKET# EC97–51, 001, SAN DIEGO GAS & ELECTRIC COMPANY, ENOVA ENERGY, INC. AND AIG TRADING CORPORATION

CAE–14.
DOCKET# ER98–2843, 001, AES REDONDO BEACH, L.L.C.
OTHER#S EL98–62, 000, SOUTHERN CALIFORNIA EDISON COMPANY
ER98–2843, 002, AES REDONDO BEACH, L.L.C.
ER98–2844, 001, AES HUNTINGTON BEACH, L.L.C.
ER98–2844, 002, AES HUNTINGTON BEACH, L.L.C.
ER98–2883, 001, AES ALAMITOS, LLC
ER98–2883, 002, AES ALAMITOS, L.L.C.
ER98–2971, 001, EL SEGUNDO POWER, LLC
ER98–2971, 002, EL SEGUNDO POWER, LLC
ER98–2972, 001, LONG BEACH GENERATION, LLC
ER98–2972, 002, LONG BEACH GENERATION, LLC
ER98–2977, 001, OCEAN VISTA POWER GENERATION, L.L.C., MOUNTAIN VISTA POWER GENERATION, L.L.C. AND ALTA POWER GENERATION, L.L.C. ET AL.
ER98–2977, 002, OCEAN VISTA POWER GENERATION, L.L.C., MOUNTAIN VISTA POWER GENERATION, L.L.C. AND ALTA POWER GENERATION, L.L.C. ET AL.
ER98–3106, 001, WILLIAMS ENERGY SERVICES COMPANY
ER98–3416, 001, DUKE ENERGY OAKLAND, L.L.C.
ER98–3417, 001, DUKE ENERGY MORRO BAY, L.L.C.
ER98–3418, 001, DUKE ENERGY MOSS LANDING, L.L.C.

CAE–15.
DOCKET# ER98–2023, 001, NEW ENGLAND POWER COMPANY

CAE–16.
DOCKET# ER96–1585, 001, NEW ENGLAND POWER COMPANY, NEES TRANS-MISSION SERVICES, INC. AND GRANITE STATE ELECTRIC COMPANY, ET AL.

OTHER#S ER96–1738, 001, NORTHEAST UTILITIES SERVICE COMPANY
ER96–1833, 001, CENTRAL VERMONT PUBLIC SERVICE CORPORATION AND CONNECTICUT VALLEY ELECTRIC COMPANY
ER96–1868, 001, NORTHEAST UTILITIES SERVICE COMPANY
CAE–17.
OMITTED
CAE–18.
DOCKET# ER94–1409, 001, CAMBRIDGE ELECTRIC LIGHT COMPANY
OTHER#S EL94–88, 001, CAMBRIDGE ELECTRIC LIGHT COMPANY
CAE–19.
DOCKET# EL96–68, 001, CUERO HYDROELECTRIC, INC. V. THE CITY OF CUERO, TEXAS
OTHER#S QF96–107, 002, CUERO HYDROELECTRIC, INC. V. THE CITY OF CUERO, TEXAS
CAE–20.
DOCKET# ER97–4422, 001, CINERGY SERVICES, INC. AND PSI ENERGY, INC.
CAE–21.
OMITTED
CAE–22.
DOCKET# EL97–4, 000, FLORIDA POWER & LIGHT COMPANY
OTHER#S EL97–6, 000, FLORIDA MUNICIPAL POWER AGENCY
CAE–23.
DOCKET# EL98–17, 000, POTOMAC ELECTRIC POWER COMPANY V. ALLEGHENY POWER SYSTEM
CAE–24.
DOCKET# EL98–69, 000, CHAMPION INTERNATIONAL CORP. AND BUCKSPORT ENERGY, L.L.C. V. ISO-NEW ENGLAND, INC., NEW ENGLAND POWER POOL AND CENTRAL MAINE POWER COMPANY
CAE–25.
DOCKET# EL95–70, 000, JERSEY CENTRAL POWER & LIGHT COMPANY V. PENNSYLVANIA POWER & LIGHT COMPANY
CAE–26.
DOCKET# OA97–105, 001, CAROLINA POWER & LIGHT COMPANY
OTHER#S OA97–184, 001, THE DETROIT EDISON COMPANY
OA97–184, 002, THE DETROIT EDISON COMPANY
OA97–280, 001, KANSAS CITY POWER & LIGHT COMPANY
OA97–280, 002, KANSAS CITY POWER & LIGHT COMPANY
OA97–287, 001, CENTRAL POWER AND LIGHT COMPANY, PUBLIC SERVICE COMPANY OF OKLAHOMA, SOUTHWESTERN ELECTRIC POWER CO. AND WEST TEXAS UTILITIES CO., ET AL.
OA97–407, 001, DUQUESNE LIGHT COMPANY
OA97–432, 001, CENTRAL LOUISIANA ELECTRIC COMPANY, INC.
OA97–433, 001, PUBLIC SERVICE COMPANY OF NEW MEXICO
OA97–446, 001, UTILICORP UNITED, INC.
OA97–458, 001, ENTERGY SERVICES, INC., ENTERGY ARKANSAS, INC., ENTERGY GULF STATES, INC., ENTERGY LOUISIANA, INC. AND ENTERGY MISSISSIPPI, INC. ET AL.
OA97–464, 001, SIERRA PACIFIC POWER COMPANY
OA97–512, 001, TEXAS-NEW MEXICO POWER COMPANY
OA97–720, 001, PUBLIC SERVICE COMPANY OF NEW MEXICO

Consent Agenda—Gas and Oil

CAG–1.
DOCKET# RP98–401, 000, IROQUOIS GAS TRANSMISSION SYSTEM, L.P.
OTHER#S RP98–401, 001, IROQUOIS GAS TRANSMISSION SYSTEM, L.P.
CAG–2.
DOCKET# RP98–416, 000, NATIONAL FUEL GAS SUPPLY CORPORATION
CAG–3.
DOCKET# RP98–422, 000, TEXAS EASTERN TRANSMISSION CORPORATION
CAG–4.
DOCKET# RP98–425, 000, TEXAS GAS TRANSMISSION CORPORATION
CAG–5.
DOCKET# RP98–430, 000, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–6.
DOCKET# RP99–1, 000, TENNESSEE GAS PIPELINE COMPANY
CAG–7.
DOCKET# RP99–47, 000, NATIONAL FUEL GAS SUPPLY CORPORATION
CAG–8.
DOCKET# RP99–69, 000, NATIONAL FUEL GAS SUPPLY CORPORATION
CAG–9.
DOCKET# TM99–1–22, 000, CNG TRANSMISSION CORPORATION
CAG–10.
OMITTED
CAG–11.
OMITTED
CAG–12.
DOCKET# RP98–259, 000, NORAM GAS TRANSMISSION COMPANY
CAG–13.
DOCKET# RP98–345, 000, NORTHERN BORDER PIPELINE COMPANY
CAG–14.
DOCKET# RP98–417, 000, PG&E GAS TRANSMISSION, NORTHWEST CORPORATION
CAG–15.
OMITTED
CAG–16.
DOCKET# RP98–423, 000, MISSISSIPPI RIVER TRANSMISSION CORPORATION
OTHER#S RP98–423, 001, MISSISSIPPI RIVER TRANSMISSION CORPORATION
CAG–17.
DOCKET# RP99–10, 000, WILLIAMS GAS PIPELINES CENTRAL, INC.
OTHER#S RP99–10, 001, WILLIAMS GAS PIPELINES CENTRAL, INC
CAG–18.
DOCKET# RP99–11, 000, WILLIAMS GAS PIPELINES CENTRAL, INC.
OTHER#S RP89–183, 083 WILLIAMS GAS PIPELINES CENTRAL, INC
CAG–19.
DOCKET# RP99–16, 000, WILLIAMS GAS PIPELINES CENTRAL, INC.
OTHER#S RP89–183, 083 WILLIAMS GAS PIPELINES CENTRAL, INC
CAG–20.
OMITTED
CAG–21.
OMITTED
CAG–22.
OMITTED
CAG–23.
DOCKET # RP99–34,000, TRANSWESTERN PIPELINE COMPANY
CAG–24.
DOCKET # RP99–35,000, NORTHERN NATURAL GAS COMPANY
CAG–25.
DOCKET # RP99–37,000, NORTHERN NATURAL GAS COMPANY
CAG–26.
DOCKET # TM99–1–25,000, MISSISSIPPI RIVER TRANSMISSION CORPORATION
OTHER #S TM99–1–25,001, MISSISSIPPI RIVER TRANSMISSION CORPORATION
CAG–27.
DOCKET # TM99–1–28, 000, PANHANDLE EASTERN PIPE LINE COMPANY
CAG–28.
OMITTED
CAG–29.
OMITTED
CAG–30.
OMITTED
CAG–31.
OMITTED
CAG–32.
DOCKET # PR98–15, 000, LOUISIANA RESOURCES PIPELINE COMPANY LIMITED PARTNERSHIP
CAG–33.
DOCKET # PR98–9, 000, TEKAS PIPELINE, L.L.C.
OTHER #S
PR98–9, 001, TEKAS PIPELINE, L.L.C.
PR98–9 002, TEKAS PIPELINE, L.L.C.
CAG–34.
DOCKET # RP97–20, 017, EL PASO NATURAL GAS COMPANY
CAG–35.
DOCKET # RP98–181, 001, OKTEX PIPELINE COMPANY
CAG–36.
DOCKET # RP98–203, 000, NORTHERN NATURAL GAS COMPANY
OTHER #S RP98–203, 001, NORTHERN NATURAL GAS COMPANY
CAG–37.
DOCKET # RP98–371, 002, WILLIAMS GAS PIPELINES CENTRAL, INC.
CAG–38.
DOCKET # RP99–36, 000, NORTHERN NATURAL GAS COMPANY
CAG–39.
DOCKET # SA98–9, 000, MERLEYN A. CALVIN
CAG–40.
DOCKET # SA98–61, 000, BRUCE F. WELNER
CAG–41.
DOCKET # SA98–63, 000, MULL DRILLING COMPANY, INC.
CAG–42.
DOCKET # RP97–369, 003, PUBLIC SERVICE COMPANY OF COLORADO, ET AL.
OTHER #S RP97–369, 004, PUBLIC SERVICE COMPANY OF COLORADO, ET AL.
RP98–39, 006, NORTHERN NATURAL GAS COMPANY
RP98–39, 011, NORTHERN NATURAL GAS COMPANY

RP98–40, 005, PANHANDLE EASTERN PIPE LINE COMPANY
RP98–40, 008, PANHANDLE EASTERN PIPE LINE COMPANY
RP98–42, 004, ANR PIPELINE COMPANY
RP98–42, 009, ANR PIPELINE COMPANY
RP98–43, 004, ANADARKO GATHERING COMPANY
RP98–43, 008, ANADARKO GATHERING COMPANY
RP98–52, 005, WILLIAMS NATURAL GAS COMPANY
RP98–52, 009 WILLIAMS NATURAL GAS COMPANY
RP98–53, 005, KN INTERSTATE GAS TRANSMISSION
RP98–53, 007 KN INTERSTATE GAS TRANSMISSION
RP98–54, 006, COLORADO INTERSTATE GAS COMPANY
RP98–54, 008 COLORADO INTERSTATE GAS COMPANY
CAG–43.
DOCKET # RP97–375, 005, WYOMING INTERSTATE COMPANY, LTD.
CAG–44.
DOCKET # RP91–203, 062, TENNESSEE GAS PIPELINE COMPANY
OTHER #S RP92–132, 049, TENNESSEE GAS PIPELINE COMPANY
CAG–45.
DOCKET # RP97–126, 010, IROQUOIS GAS TRANSMISSION SYSTEM, L.P.
CAG–46.
OMITTED
CAG–47.
DOCKET # RP93–197, 003, UNION PACIFIC FUELS, INC. ET AL. V. SOUTHERN CALIFORIA EDISON COMPANY
OTHER #S RP93–194, 002, SOUTHERN CALIFORNIA UTILITY POWER POOL AND IMPERIAL IRRIGATION DISTRICT V. SOUTHERN CALIFORNIA GAS COMPANY
RP94–51, 002, SHELL WESTERN E&P INC. V. SOUTHERN CALIFORNIA GAS COMPANY
CAG–48.
DOCKET # MG98–9, 003, DYNEGY MIDSTREAM PIPELINE, INC.
CAG–49.
DOCKET # MG98–10, 002, VENICE GATHERING SYSTEM, L.L.C.
CAG–50.
DOCKET # CP96–178, 006, MARITIMES & NORTHEAST PIPELINE, L.L.C.
OTHER #S CP96–809, 005, MARITIMES & NORTHEAST PIPELINE, L.L.C.
CP96–810, 002, MARITIMES & NORTHEAST PIPELINE, L.L.C.
CP97–238, 006, MARITIMES & NORTHEAST PIPELINE, L.L.C. AND PORTLAND NATURAL GAS TRANSMISSION SYSTEM
CAG–51.
DOCKET # CP97–343, 002, MIDCOAST INTERSTATE TRANSMISSION, INC.
OTHER #S CP98–34, 002, MIDCOAST INTERSTATE TRANSMISSION, INC.
CAG–52.
OMITTED
CAG–53.
DOCKET # CP98–271, 001, K N WATTENBERG TRANSMISSION LIMITED LIABILITY COMPANY V. PUBLIC SERVICE COMPANY OF COLORADO, ET AL.
CAG–54.
DOCKET # CP97–699, 001, MIDCOAST INTERSTATE TRANSMISSION, INC.
CAG–55.
DOCKET # CP98–191, 000, FLORIDA GAS TRANSMISSION COMPANY
OTHER #S CP98–193, 000, FLORIDA GAS TRANSMISSION COMPANY
CAG–56.
DOCKET# CP98–280, 000, WILLIAMS GAS PIPELINES CENTRAL, INC.
CAG–57.
DOCKET# CP96–123, 000, NORTHERN NATURAL GAS COMPANY
CAG–58.
OMITTED
CAG–59.
DOCKET# CP98–228, 000, NORTHERN NATURAL GAS COMPANY
CAG–60.
DOCKET# CP98–552, 000, NORTHERN NATURAL GAS COMPANY
CAG–61.
DOCKET# CP98–623, 000, NORAM GAS TRANSMISSION COMPANY
CAG–62.
OMITTED
CAG–63.
DOCKET# CP98–568, 000, NORSE PIPELINE, LLC
OTHER#S CP98–569, 000, COLUMBIA GAS TRANSMISSION CORPORATION
CAG–64.
DOCKET# RP98–426, 000, COLUMBIA GAS TRANSMISSION CORPORATION
OTHER#S RP98–426, 001, COLUMBIA GAS TRANSMISSION CORPORATION
CAG–65.
DOCKET# RP98–427, 000, COLUMBIA GULF TRANSMISSION COMPANY
CAG–66.
DOCKET# RP99–28, 000, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–67.
DOCKET# RP99–49, 000, CNG TRANSMISSION CORPORATION
CAG–68.
DOCKET# RP99–58, 000, TENNESSEE GAS PIPELINE COMPANY
CAG–69.
DOCKET# RP99–25, 000, NORTHWEST PIPELINE CORPORATION
CAG–70.
DOCKET# RP98–394, 000, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–71.
DOCKET# CP98–755, 000, TRANSCONTINENTAL GAS PIPE LINE CORPORATION

Hydro Agenda

H–1.
RESERVED

Electric Agenda

E–1.
RESERVED

Oil and Gas Agenda

I.
PIPELINE RATE MATTERS
PR–1.
RESERVED
II.
PIPELINE CERTIFICATE MATTERS
PC–1.
DOCKET# CP96–153, 003, SOUTHERN NATURAL GAS COMPANY
OTHER#S CP96–153, 004, SOUTHERN NATURAL GAS COMPANY
ORDER ON REHEARING.

David P. Boergers,
Secretary.

[FR Doc. 98–28683 Filed 10–22–98; 12:16pm]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6180–1]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Non-Road Compression-Ignition Engine and On-Road Heavy Duty Engine Application for Emission Certification, and Participation in the Averaging, Banking, and Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Non-road Compression-ignition Engine and On-road Heavy Duty Engine Application for Emission Certification, and Participation in the Averaging, Banking, and Trading Program, EPA ICR Number 1851.01, Previous OMB Control Number 2060–0104, expiration date: 10–31–98, renewal. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 25, 1998.

FOR FURTHER INFORMATION CONTACT: Contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1851.01.

SUPPLEMENTARY INFORMATION:

Title: Non-road Compression-ignition Engine and On-road Heavy Duty Engine Application for Emission Certification, and Participation in the Averaging, Banking, and Trading Program (Previous OMB Control Number 2060–0104, EPA

ICR Number 1851.01), expiring 10/31/98. This is a request for extension of a currently approved collection.

Abstract: Under Title II of the Clean Air Act (42 U.S.C. 7521 *et seq.*; CAA or the Act), EPA is charged with issuing certificates of conformity for those engines which comply with applicable emission standards. Such a certificate must be issued before engines may be legally introduced into commerce. To apply for a certificate of conformity, manufacturers are required to submit descriptions of their planned production line, including detailed descriptions of the emission control system, and test data. This information is organized by ''engine family'' groups expected to have similar emission characteristics. There are also recordkeeping and labeling requirements.

Those manufacturers electing to participate in the Averaging Banking and Trading Program for Non-road CI engines at or below 37 kilowatts and for On-road heavy duty engines are also required to submit information regarding the calculation of projected and actual generation and usage of credits in an initial report, end-of-the-year report and final report. These reports are used for certification and enforcement purposes. Manufacturers will also maintain records for eight years on the engine families included in the program.

All the information requested by these collections is required for program implementation and activities, and is collected by the Engine Compliance Programs Group, Engine Programs and Compliance Division, Office of Mobile Sources, Office of Air and Radiation. Information submitted by manufacturers is held as confidential until the specific engine to which it pertains is available for purchase. Confidentiality to proprietary information is granted in accordance with the Freedom of Information Act, EPA regulations at 40 CFR part 2, and class determinations issued by EPA's Office of General Counsel. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 4/27/98 (63 FR 20625); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden is estimated to average 1,240.5 hours per respondent for the on-highway certification program, 333 hours per respondent for the on-highway AB&T program; 515.8 hours per respondent for the nonroad certification program, and 460 hours per respondent for the nonroad AB&T program. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Large Compression-ignition and Heavy-duty On Highway engine manufacturers.

Estimated Number of Respondents: 66.

Frequency of Response: annual.

Estimated Total Annual Hour Burden: 53,168 hours.

Estimated Total Annualized Cost Burden: $1,606,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No 1851.01 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OP Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: October 20, 1998.

Richard Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 98–28622 Filed 10–23–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6179–9]

Transfer of Confidential Business Information to Contractors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of transfer of data and request for comments.

SUMMARY: EPA will transfer to its contractor, Dynamac Corporation and its subcontractors: DynCorp and ISSI Confidential Business Information (CBI) that has been or will be submitted to EPA under section 3007 of the Resource Conservation and Recovery Act (RCRA). Under RCRA, EPA is involved in activities to support, expand and implement solid and hazardous waste regulations.

DATES: Transfer of confidential data submitted to EPA will occur no sooner than November 5, 1998.

ADDRESSES: Comments should be sent to Regina Magbie, Document Control Officer, Office of Solid Waste (5305W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Comments should be identified as ''Transfer of Confidential Data.''

FOR FURTHER INFORMATION CONTACT: Regina Magbie, Document Control Officer, Office of Solid Waste (5305W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, 703–308–7909.

SUPPLEMENTARY INFORMATION:

Transfer of Confidential Business Information

Under EPA Contract 68–W–98–231 Dynamac Corporation, and its subcontractors, will assist the Office of Solid Waste, Hazardous Waste Identification Division, by providing technical support in completing hazardous waste listing determinations, defining hazardous waste characteristics, developing the hazardous waste identification rule, and developing rules and reports pertaining to the definition of solid waste, medical waste, used oil, waste generation and transportation, and universal waste, such as batteries and fluorescent light bulbs. EPA has determined that Dynamac Corporation and its subcontractors, will need access to RCRA CBI submitted to the Office of Solid Waste to complete this work. Dynamac Corporation and its subcontractors, need access to several EPA sources including the Petroleum Refinery Data Base, the Toxics Release Inventory, the EPA National Survey of

Hazardous Waste Generators, and the Industries Studies Data Base.

In accordance with 40 CFR 2.305(h), EPA has determined that Dynamac Corporation, and its subcontractors, require access to CBI submitted to EPA under the authority of RCRA to perform work satisfactorily under the above-noted contract. EPA is submitting this document to inform all submitters of CBI of EPA's intent to transfer CBI to these firms on a need-to-know basis. Upon completing its review of materials submitted, Dynamac Corporation, and its subcontractors, will return all CBI to EPA.

EPA will authorize Dynamac Corporation, and its subcontractors, for access to CBI under the conditions and terms in EPA's ''Contractor Requirements for the Control and Security of RCRA Confidential Business Information Security Manual.'' Prior to transferring CBI to Dynamac Corporation, and its subcontractors, EPA will review and approve its security plans and Dynamac Corporation, and its subcontractors, will sign non-disclosure agreements.

Dated: October 9, 1998.

Elizabeth Cotsworth,

Acting Director, Office of Solid Waste.

[FR Doc. 98–28623 Filed 10–23–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6180–4]

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Federal Transit Administration

Transportation/Air Quality Public Information Initiative: ''It All Adds Up To Cleaner Air'' FY 99 Demonstration Communities; Request for Letters of Interest

AGENCY: Environmental Protection Agency; Federal Highway Administration and Federal Transit Administration.

ACTION: Notice.

SUMMARY: Over the past year, the Department of Transportation's (DOT) Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) and the Environmental Protection Agency's (EPA) Office of Mobile Sources (OMS) have begun a collaborative public education program to be implemented at the community level.

This effort is designed to inform the public about the connection between transportation, air pollution and public health, and the ability of individuals to make a difference once they are informed about the environmental consequences of their daily travel choices . Through this Document, the Department of Transportation's Federal Highway Administration and Federal Transit Administration, and the Environmental Protection Agency's Office of Mobile Sources are soliciting interest from organizations and communities around the country who would benefit from participation as Demonstration Communities in ''It All Adds Up to Cleaner Air''—a transportation/air quality public information initiative.

DATES: Deadline for Letters of Interest—November 25, 1998.

ADDRESSES: This document can also be accessed at no cost by contacting: DOT/Federal Highway Administration Web Page: ''www.fhwa.dot.gov/environment/pubout'' EPA's Office of Mobile Sources Web Page: ''www.epa.gov/oms'' click on ''What's New?''

FOR FURTHER INFORMATION CONTACT:

Kathy Daniel, Project Manager, US DOT Federal Highway Administration, 400 7th Street SW (HEP–40), Washington, DC 20590, (Phone) 202/366–6276 (Fax) 202/366–3409, ''kathleen.daniel@fhwa.dot.gov'';

Patrice Thornton, Project Manager, EPA Office of Mobile Sources, 2000 Traverwood Drive, Ann Arbor, MI 48105, (Phone) 734/214–4329 (Fax) 734/214–4906, ''thornton.patrice@epa.gov'';

Abbe Marner, Federal Transit Administration, 400 7th Street SW (TPL–12), Washington, DC 20590, (Phone) 202/366–4317 (Fax) 202/493–2478, ''abbe.marner@fta.dot.gov''.

SUPPLEMENTARY INFORMATION:

Affected Entities: Communities and/or organizations interested in participating as Demonstration Communities in a public education project addressing transportation choices and their impact on air quality.

Title: Transportation/Air Quality Public Information Initiative: ''It All Adds Up To Cleaner Air''—FY 99 Demonstration Communities—Request For Letters of Interest.

Abstract: Over the past year, the Department of Transportation's Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) and the Environmental Protection Agency's Office of Mobile Sources (OMS) have begun collaborating on a public education program to be implemented at the community level, which informs the public about the connection between transportation, air pollution, public health, and the ability of individuals to make a difference once they are informed about the environmental consequences of their daily travel choices. This goal is being accomplished by (1) providing national support for community-based public education efforts on the impacts of transportation choices on air quality, traffic congestion , and public health, (2) encouraging and facilitating the creation of national and local coalitions committed to raising awareness, understanding, acceptance, and action related to transportation/air quality issues, and (3) encouraging informed and responsible choices for individual actions through public information. The theme of the initiative is ''It All Adds Up to Cleaner Air.''

The federal partners—FHWA, FTA and OMS—are currently pilot-testing program design as well as products produced for three diverse communities—Dover, Delaware; Milwaukee, Wisconsin; and San Francisco, California—in support of the long term effort. Pilot communities were selected to provide an opportunity to learn from the experience of areas with diversity in size, existing transportation infrastructure, air quality, and degrees of public understanding of transportation, air quality and the impact of their individual choices. Coalitions of organizations with vested interest in transportation/air quality issues in each of the three pilot communities are currently involved in public education campaigns on transportation choices and their impact on air quality. The messages being tested in the pilot phase of the initiative focus on combining errands, car care, and using alternative modes of transportation. These initial efforts are scheduled to continue through October, 1998. Because the approach and results differ from community to community, important and relevant lessons are being learned from each site. Comprehensive evaluation of and in collaboration with the pilot sites are being undertaken by the federal partners in collaboration with the pilot sites in the fall of this year. The program will then be expanded to include as many as twelve (12) Demonstration Communities in 1999.

Purpose of Request for Letters of Interest

Through this Notice, FHWA, FTA and OMS are soliciting interest from organizations and communities around the country who believe they would benefit from participation as a

Demonstration Community in ''It All Adds Up to Cleaner Air''—the transportation/air quality public information initiative. Demonstration Communities will receive national support to further their public education efforts on transportation and air quality. National support to be provided includes market research; consistent national messages; limited seed money ($25,000 per site); a comprehensive resource ''tool kit'' including transportation and air quality facts and figures; promotional materials; high quality TV, radio, and print advertisements and other public education tools; ''how to'' information; and technical assistance to create or expand and support coalitions committed to improving quality of life through minimizing traffic congestion and reducing air pollution. This Notice provides information which will allow organizations and communities to determine their interest in participating as a Demonstration Community in the 1999 ''It All Adds Up to Cleaner Air'' initiative, and to begin preparing information needed to apply for the program later this year.

The purpose of requesting a Letter from interested communities and organizations is to help the federal agencies prepare an efficient evaluation/selection process. Submitting a Letter of Interest will not commit an organization/community to proceed with an application. Those not submitting a Letter may still apply at the appropriate time.

Developing a Letter of Interest

Letters of Interest should be 3–5 pages. The federal partners are interested in brief answers to the following questions:

—Is the community committed to raising public awareness of transportation, air quality, public health and the impact of individual actions?
—What is the extent of the air quality and congestion problem in the interested community?
—Is there an existing coalition or collaborative established to address transportation and air quality issues?
—If so, who are the partners in this coalition?
—If not, is the community committed to developing and maintaining such a coalition?
—Is the community currently involved in a public education program on transportation/air quality issues?
—Could activities begun or expanded continue beyond the period when federal support is being provided to the community?

Expansion of the ''It All Adds Up To Cleaner Air'' Initiative

Expansion of this initiative will take place in two phases. Phase One, begun with this Notice, will involve submission of a ''Letter of Interest'' from organizations who might be interested in participating as a 1999 Demonstration Community. Phase Two will begin with a formal solicitation expected to be issued by the federal partners in November, 1998. The solicitation will outline all requirements and will be widely distributed through the **Federal Register**, Agency Websites and other electronic means, existing organizational networks and publications, conferences, etc. Organizations interested in participating will then have 60 days to submit the requested information.

Expectations for the 1999 Demonstration Communities

Using the materials developed and refined through the pilot sites, Demonstration Communities will further our knowledge of what works and what doesn't. Dialogue with the public will address (1) the connection between transportation choices, traffic congestion, and air quality, (2) alternate modes of transportation, and (3) efforts to reach the long-term objectives of environmentally beneficial transportation choices in the community, informed life-work decisions, and increased investment in transportation and air quality. Additional and innovative materials will be developed which can be replicated and provided for use in other community-based efforts nationwide. Through evaluation, we will continue to learn lessons about organizations and perspectives which must be involved and what resources are required to ensure long-term success in addressing transportation choices and their impact on air quality. Demonstration Communities will be expected to work closely with the federal partners as they track outreach activities, successes and challenges, market research, etc.

Partnerships

The cornerstone of the overall initiative is the forging of long-term partnerships which will integrate the need to address air quality and transportation choices into community planning and education. These partnerships will ensure that public education and investment in transportation and air quality will continue beyond the initial federal support in Demonstration Communities. Partners could include employers, non-profit organizations, health providers, public interest and business groups, youth, and other levels of government.

Proposed Time Line

Request for Letters of Interest Published—September 1998
Letters of Interest Received—October 1998
Solicitation Issued—November 1998
Requested Information Due—January 1999
Evaluation/Selection Completed—March 1999
Award of Funds—April 1999

Eligible Organizations

Letters of Interest will be accepted from any community/public organization with interest in this initiative. However, when Demonstration Communities are selected through review of formal information received in Phase 2, priority will be given to communities/public organizations which can clearly demonstrate a perceived air quality and traffic congestion problem, involvement of a wide range of organizations, a level of public understanding of transportation choices as solutions to congestion and air quality problems, and the commitment to conduct public education linking transportation, air quality, public health and individual choices. Please note that only Metropolitan Planning Organizations (MPOs), state departments of transportation, state, local, and regional air management agencies, councils of government and public transit agencies will be eligible to serve as funding recipients for the seed money offered to selected communities. Lead organizations are strongly encouraged to create partnerships with other organizations actively involved in congestion mitigation and air quality improvement.

Potential Information To Be Requested Through Formal Solicitation

FHWA, FTA and OMS are currently developing the selection criteria against which proposals will be evaluated. However, it is likely that the information requested will include how the community will demonstrate:

—A perceived air quality and congestion problem
—Level of public understanding of transportation choices as solutions to congestion and air quality problems
—Goals of improved air quality and reduced congestion through transportation choices
—Effectiveness of collaborative activities and partnerships with other

stakeholders needed to effectively develop or implement the project

—Demonstrated ability to reach target audiences through media, outreach and collaborative efforts

—Ability to integrate these efforts with existing programs/campaigns

—Potential for continuing the effort beyond federal support

Additional Items of Interest

—The limited amount of ''seed money'' is clearly insufficient to accomplish the goals of the overall initiative. In the final selection process, priority will be given to those who indicate a clear ability to undertake the initiative and commit resources beyond those provided through the federal partners. Participation as a Demonstration Community will clearly require a commitment of human as well as financial resources.

—Potential Demonstration Communities are encouraged to consider integrating this initiative into other ongoing public education efforts. Other potential funding sources could include the Congestion Mitigation and Air Quality Improvement Program (CMAQ), the Transportation and Community and Systems Preservation Pilot Program (TCSP) under the Transportation Equity Act of the 21st Century, the annual Mobile Source Outreach Assistance Competition (limited to designated state and local air management agencies) and other funds obtained to conduct transportation/air quality public education activities.

Submitting ''Letters of Interest''

Letters of Interest'' (5 copies) should be sent to: Susan Bullard, Director of Outreach and Communication, US EPA Office of Mobile Sources, 401 M Street SW (MC 6401), Washington, DC 20460, (phone) 202/260–2614, (fax) 202/260–6011, email: ''bullard.susan@epa.gov''.

Dated: September 23, 1998.

Margo T. Oge,

Director, Office of Mobile Sources, Environmental Protection Agency.

Dated: October 16, 1998.

Charlotte M. Adams,

Associate Administrator for Planning, Federal Transit Administration.

Dated: October 15, 1998.

James M. Shrouds,

Chief, Environmental Analysis Division, Office of Environment and Planning, Federal Highway Administration.

[FR Doc. 98–28617 Filed 10–23–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6180–3]

Good Neighbor Environmental Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Public Law 92–463), the U.S. Environmental Protection Agency gives notice of a meeting of the Good Neighbor Environmental Board.

The Good Neighbor Environmental Board was created by the Enterprise for the Americas Initiative Act of 1992. An Executive Order delegates implementing authority to the Administrator of EPA. The Board is responsible for providing advice to the President and the Congress on environmental and infrastructure issues and needs within the States contiguous to Mexico. The Board is required to submit an annual report to the President and the Congress. The Board has representatives from eight U.S. Government agencies; the governments of the States of Arizona, California, New Mexico and Texas; and private organizations with expertise on environmental and infrastructure problems along the southwest border. The Board meets three times annually, including an annual meeting with its Mexican counterpart, Region 1 of the Mexican National Advisory Council for Sustainable Development. This will be the Board's annual meeting with Region 1 of the Mexican National Advisory Council for Sustainable Development.

DATES: The Board will meet on November 5–6, 1998 . On November 5, the Board will meet independently from 8:30 a.m. until 5:30 p.m. On November 6, the Board will meet jointly with members of Region 1 of the Mexican National Advisory Council for Sustainable Development from 8:30 a.m. until 2:30 p.m.

ADDRESSES: The Gran Premier Hotel, Colon 1304, Colonia Del Prado, Reynosa, Tamaulipas, Mexico. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Contact Mr. Robert Hardaker, Designated Federal Officer, U.S. EPA, Office of Cooperative Environmental Management, telephone 202–260–2477.

Dated: October 9, 1998.

Robert Hardaker,

Designated Federal Officer, Good Neighbor Environmental Board.

[FR Doc. 98–28618 Filed 10–23–98; 8:45 am]

BILLING CODE: 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6180–2]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notices.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

FOR FURTHER INFORMATION CONTACT: Call Sandy Farmer at (202) 260–2740, or E-mail at ''farmer.sandy@epamail.epa.gov'', and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 1153.06; NESHAP for Equipment Leaks (Fugitive Emission Sources); in 40 CFR Part 61, Subpart V; was approved 08/25/98; OMB No. 2060–0068; expires 08/31/2001.

EPA ICR No. 1692.03; NESHAP for Hazardous Air Pollutants for Petroleum Refineries; in 40 CFR Part 63, Subpart CC; was approved 08/17/98; OMB No. 2060–0340; expires 08/31/2001.

EPA ICR No. 1078.05; NSPS for Phosphate Rock; in 40 CFR Part 60, Subpart NN; was approved 08/27/98; OMB No. 2060–0011; expires 08/31/2001.

EPA ICR No. 0657.06; NSPS for Graphic Arts Industry; in 40 CFR Part 60, Subpart QQ; was approved 08/31/98; OMB No. 2060–0105; expires 08/31/2001.

EPA ICR No. 1748.02; State Small Business Stationary Source Technical and Environmental Compliance Assistance Program Annual Reporting

Form; non-regulatory, was approved 09/10/98; OMB No. 2060–0337; expires 09/30/2001.

EPA ICR No. 1158.06; NSPS for Rubber Tire Manufacturing; in 40 CFR Part 60, Subpart BBB; was approved 09/28/98; OMB No. 2060–0156; expires 09/30/2001.

ICR No. 0661.06; NSPS for Asphalt Processing and Asphalt Roofing Manufactures, Reporting and Record Keeping Requirements; in 40 CFR Part 60, Subpart UU; was approved 09/28/98; OMB No. 2060–0002; expires 09/30/2001.

EPA ICR No. 1051.07; NSPS for Portland Cement Plants; in 40 CFR Part 60, Subpart F; was approved 09/28/98; OMB No. 2060–0025; expires 09/30/2001.

EPA ICR No. 0596.06; Application and Summary Report for an Emergency Exemption for Pesticides; was approved 09/22/98; OMB No. 2070–0032; expires 09/30/2001.

EPA ICR No. 1663.02; Compliance Assurance Monitoring (CAM) Rule; in 40 CFR Part 64 and 40 CFR 70.6(c)(5)(iii); was approved 09/29/98; OMB No. 2060–0376; expires 09/30/2001.

EPA ICR No. 1860.01; Agency Generic Information Collection Request, Regional Compliance Assistance Program Evaluation; was approved 09/10/98; OMB No. 2020–0015; expires 09/30/2001.

EPA ICR No. 1759.02; Pesticides Worker Protection Standard Training and notification; in 40 CFR Part 156 and Part 170; was approved 09/08/98; OMB No. 2070–0148; expires 09/30/2001.

EPA ICR No. 1729.02; Disposal of Polychlorinated Biphenyls (PCBs); in 40 CFR Part 761; was approved 09/09/98; OMB No. 2070–0159; expires 09/30/2001.

EPA ICR No. 1816.01; State Source Water Assessment and Protection Programs; was approved 09/21/98; OMB No. 2040–0197; expires 08/31/2000.

EPA ICR No. 1836.01; Public Water System Supervision Primacy Regulation; in 40 CFR 142; was approved 09/21/98; OMB No. 2040–0195; expires 09/30/2001.

OMB Disapproval

EPA ICR No. 1828.01; Industry Screener Questionnaire: Phase 1 Cooling Waster Intake Structures; was disapproved by OMB 09/11/98.

Extensions of Expiration Dates

EPA ICR No. 1246.05; Reporting and Record Keeping for Asbestos Abatement Worker Protection; OMB No. 2070–0072; in 40 CFR Part 763, Subpart G; on 07/27/98 OMB extended the expiration date through 11/30/98.

EPA ICR No. 1446.05; PCBs, Notification and Manifesting of PCB Waste Activities and Records of PCB Storage and Disposal; in 40 CFR Part 761.180; OMB No. 2070–0112; on 07/27/98 OMB extended the expiration date through 12/31/98.

EPA ICR No. 1170.05; Collection of Economic and Program Support Data; OMB No. 2070–0034; on 07/27/98 OMB extended the expiration date through 11/30/98.

EPA ICR No. 602.02; Maximum Achievable Control Technology Standards Development Program; OMB No. 2060–0239; non-regulatory, on 08/31/98 OMB extended the expiration date through 02/28/99.

EPA ICR No. 1367.04; gasoline Volatility Rule; in 40 CFR 80.27; OMB 2060–0178; on 08/31/98 OMB extended the expiration date through 02/28/99.

EPA ICR No. 0168.06; National Pollutant Discharge Elimination System and Sewage; in 40 CFR 123, OMB No. 2040–0057; on 08/31/98 OMB extended the expiration date through 02/28/99.

EPA ICR No. 1758.02; Measures of Success for Compliance Assistance Reporting Form; non-regulatory OMB No. 2060–0346; on 09/25/98 OMB extended the expiration date through 03/31/99.

EPA ICR No. 1292.04; Aftermarket Catalytic Converter Policy; non-regulatory, OMB NO. 2060–0135; on 09/24/98 OMB extended the expiration date through 03/31/99.

EPA ICR No. 1841.01; Notice of Intent of Storm Water Discharges Associated with Construction Activity under an NPDES General Permit; in 40 CFR Part 122; OMB No. 2040–0188; on 08/28/98 OMB extended the expiration date through 12/31/98.

EPA ICR No. 0107.05; Source Compliance and State Action Reporting; in 40 CFR Part 51, Subpart Q, OMB No. 2060–0096; on 09/28/98 OMB extended the expiration date through 01/31/99.

EPA ICR No. 0167.05; Verification of Test Parameters and Parts List for Light-Duty Vehicles, Light-Duty Trucks, and Heavy-Duty Engines; non-regulatory, OMB No. 2060–0094; on 08/27/98 OMB extended the expiration date through 12/31/98.

EPA ICR No. 1679.02; Federal Standards of Marine Tank Vessel Loading and Unloading Operations and National Emission Standards for Hazardous Air Pollutants for Marine Tank Vessel Loading and Unloading Operation; in 40 CFR Part 63, Subpart Y; OMB No. 2060–0289; on 08/06/98 OMB extended the expiration date through 10/31/98.

Dated: October 21, 1998.

Richart T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 98–28624 Filed 10–23–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6179–8]

Clean Water Act Class II: Proposed Administrative Penalty Assessment and Opportunity To Comment Regarding City of Knob Noster, Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment regarding City of Knob Noster, Missouri.

SUMMARY: EPA is providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties of various violations of the Act. EPA may issue such orders after filing a Complaint commencing either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1319(g)(4)(A).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR part 22. The procedures by which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty (30) days after issuance of public notice.

On September 29, 1998, EPA commenced the following Class II proceeding for the assessment of penalties by filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency. Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7630, the following Complaint:

In the Matter of City of Knob Noster, Missouri; Docket No. VII–97–W–0033.

The Complaint proposes a penalty of Ten Thousand Dollars for violations of section 308 of the Clean Water Act.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review the

Complaint or other documents filed in this proceeding, comment upon the proposed penalty assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above.

The administrative record for the proceeding is located in the EPA Regional Office at the address stated above, and the file will be open for public inspection during normal business hours. All information submitted by the City of Knob Noster, Missouri is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment EPA will issue no final order assessing a penalty in this proceeding prior to thirty (30) days from the date of this document.

Dated: September 30, 1998.

Martha R. Steincamp,

Acting Regional Administrator, Region VII.

[FR Doc. 98–28621 Filed 10–23–98; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Deletion of Agenda Item from October 22nd Open Meeting

The following item has been deleted from the list of agenda items scheduled for consideration at the October 22, 1998, Open Meeting and previously listed in the Commission's Notice of October 15, 1998.

Item No., Bureau, Subject

3—International—Title: Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992; and Direct Broadcast Satellite Public Interest Obligations (MM Docket No. 93–25). Summary: The Commission will consider implementing Section 335 of the Communications Act regarding public interest requirements for Direct Broadcast Satellite Systems.

Date October 21, 1998.

Federal Communications Commission

Magalie Roman Salas,

Secretary.

[FR Doc. 98–28759 Filed 10–22–98; 3:48 pm]

BILLING CODE 6712–01–F

OFFICE OF SCIENCE AND TECHNOLOGY POLICY (OSTP)

Meeting of the President's Committee of Advisors on Science and Technology

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and agenda for a meeting of the President's Committee of Advisors on Science and Technology (PCAST), and describes the functions of the Committee. Notice of this meeting is required under the Federal Advisory Committee Act.

Dates and Place: November 19, 1998, Washington, DC. This meeting will take place in the Truman Room (Third Floor) of the White House Conference Center, 726 Jackson Place, NW, Washington, DC.

Type of Meeting: Open.

Proposed Schedule and Agenda: The President's Committee of Advisors on Science and Technology (PCAST) will meet in open session on Thursday, November 19, 1998, at approximately 1:30 p.m. to discuss (1) activities of the PCAST of Congressional concern, and (2) the Science and Technology budget. This session will end at approximately 3:00 p.m.

Public Comments: There will be a time allocated for the public to speak on any of the above agenda items. Please make your request for the opportunity to make a public comment five (5) days in advance of the meeting. Written comments are welcome anytime prior to or following the meeting. Please notify Joan P. Porter, PCAST Executive Secretary, at (202) 456–6101 or fax your requests/comments to (202) 456–6026.

FOR FURTHER INFORMATION CONTACT: For information regarding time, place, and agenda, please call Joan P. Porter, PCAST Executive Secretary, at (202) 456–6101, prior to 3:00 p.m. on Friday, November 13, 1998. Please note that public seating for this meeting is limited, and is available on a first-come first served basis.

SUPPLEMENTARY INFORMATION: The President's Committee of Advisors on Science and Technology was established by Executive Order 12882, as amended, on November 23, 1993. The purpose of PCAST is to advise the President on matters of national importance that have significant science and technology content, and to assist the President's National Science and Technology Council in securing private sector participation in its activities. The Committee members are distinguished individuals appointed by the President from non-Federal sectors. The PCAST is co-chaired by the Assistant to the President for Science and Technology, and by John Young, former President and CEO of the Hewlett-Packard Company.

Dated: October 20, 1998.

Barbara Ann Ferguson,

Administrative Officer, Office of Science and Technology Policy.

[FR Doc. 98–28521 Filed 10–23–98; 8:45 am]

BILLING CODE 3170–01–M

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting; Announcing an Open Meeting of the Board

TIME AND DATE: 10:00 a.m., Wednesday, October 28, 1998.

PLACE: Board Room, Second Floor, Federal Housing Finance Board 1777 F Street, N.W., Washington, D.C. 20006.

STATUS: The entire meeting will be open to the public.

MATTERS TO BE CONSIDERED DURING PORTIONS OPEN TO THE PUBLIC:

- Final Rule—Election of Federal Home Loan Bank Directors.
- Final Rule—Community Investment Cash Advance Program.
- Final Rule—Federal Home Loan bank Standby Letter of Credit.
- Procedures: Requests for Waiver, No-Action Letters, Policy Interpretations and Legal Opinions.
- Adjudicatory Hearing Procedures.
- Supervisory Determination—Tahquitz Court.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

William W. Ginsberg,

Managing Director.

[FR Doc. 98–28663 Filed 10–22–98; 11:40 am]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors.

Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 9, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, NW, Atlanta, Georgia 30303-2713:

1. William Biggs, North Miami Beach, Florida; to retain voting shares of Skylake Bankshares, Inc., North Miami Beach, Florida, and thereby indirectly retain voting shares of Skylake State Bank, North Miami Beach, Florida.

Board of Governors of the Federal Reserve System, October 20, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–28553 Filed 10–23–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 98-28024) published on page 56034 of the issue for Tuesday, October 20, 1998.

Under the Federal Reserve Bank of Chicago heading, the entry for Capitol bancorp, Ltd., Lansing, Michigan, is revised to read as follows:

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Capitol Bancorp, Ltd., Lansing, Michigan, and Sun Community Bancorp Limited, Phoenix, Arizona; to acquire 51 percent of the voting shares of Sunrise Bank of Arizona, Phoenix, Arizona.

Comments on this application must be received by November 13, 1998.

Board of Governors of the Federal Reserve System, October 20, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–28554 Filed 10–23–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 19, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. PAB Bankshares, Inc., Valdosta, Georgia; to merge with Eagle Bancorp, Inc., Statesboro, Georgia, and thereby indirectly acquire Eagle Bank & Trust Company, Statesboro, Georgia.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Bern Bancshares, Inc., Bern, Kansas; to merge with Axtell Agency, Inc., Axtell, Kansas, and thereby indirectly acquire State Bank of Axtell, Axtell, Kansas.

2. FirstBank Holding Company of Colorado, ESOP, Lakewood, Colorado; to acquire up to 26.86 percent of the voting shares of FirstBank Holding Company of Colorado, Lakewood, Colorado; and thereby indirectly acquire FirstBank, Littleton, Colorado; FirstBank of Arvada, Arvada, Colorado; FirstBank of Aurora, Aurora, Colorado; FirstBank of Avon, Avon, Colorado; FirstBank of Boulder, Boulder, Colorado; FirstBank of Breckenridge, Breckenridge, Colorado; FirstBank of Douglas County, Castle Rock, Colorado; FirstBank of Colorado Springs, Colorado Springs, Colorado; FirstBank of Cherry Creek, Denver, Colorado; FirstBank of Denver, Denver, Colorado; FirstBank of Longmont, FirstBank of Evergreen, Evergreen, Colorado; FirstBank of Northern Colorado, Fort Collins, Colorado; FirstBank of Greeley, Greeley, Colorado; FirstBank of Tech Center, Englewood, Colorado; FirstBank of Colorado, Lakewood, Colorado; FirstBank of South Jeffco, Littleton, Colorado; FirstBank of Lakewood, Lakewood, Colorado; FirstBank of Littleton, Littleton, Colorado; FirstBank of Arapahoe County, Littleton, Colorado; FirstBank of Parker, Parker, Colorado; FirstBank of Silverthorne, Silverthorne, Colordo; FirstBank of Vail, Vail, Colorado; FirstBank North, Westminster, Colorado; and FirstBank of Wheat Ridge, Wheat Ridge, Colorado.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Henderson Citizens Bancshares, Inc., and Henderson, Texas; Henderson Citizens Delaware Bancshares, Inc., Dover, Delaware; and Citizens National Bank, Henderson, Texas; to become bank holding companies by acquiring 100 percent of the voting shares of Jefferson National Bank, Jefferson, Texas.

D. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of Metropolitan Bancshares, Inc., Aurora, Colorado, and thereby indirectly acquire Community Bank of Parker, Parker, Colorado.

Board of Governors of the Federal Reserve System, October 20, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–28555 Filed 10–23–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for

bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 9, 1998.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. State Street Corporation, Boston, Massachusetts; to engage *de novo* through its subsidiary, State Street Financial Markets, LLC, Boston, Massachusetts, in underwriting and dealing, to a limited extent, in municipal revenue bonds, commercial paper, 1-4 family mortgage-related securities and consumer receivables-related securities. *See Citicorp, J.P. Morgan & Co., Inc. and Bankers Trust New York Corp.*, 73 Fed. Res. Bull. 473 (1987), aff'd sub nom., *Securities Industry Ass'n v. Board of Governors*, 839 F.2d 47 (2d Cir.), cert. denied, 486 U.S. 1059 (1988); *Chemical New York Corp., The Chase Manhattan Corp., Bankers Trust New York Corp., Citicorp, Manufacturers Hanover Corp. and Security Pacific Corp.*, 73 Fed. Res. Bull. 731 (1987), modified by Order Approving Modifications to the Section 20 Orders, 75 Fed. Res. Bull. 751 (1989); in underwriting and dealing in government obligations and money market instruments, pursuant to § 225.28(b)(8)(i) of Regulation Y; in securities lending activities. *ABN AMRO*, 81 Fed. Res. Bull. 182 (1995); *Swiss Bank Corp.*, 81 Fed. Res. Bull. 185, 188 n.16 (1995); *Saban*, 80 Fed. Res. Bull. 249 (1994); *Saban*, 78 Fed. Res. Bull. 955 (1992); *Chase Manhattan Corp.*, 69 Fed. Res. Bull. 725 (1983); in securities brokerage activities, pursuant to § 225.28(b)(7)(i) of Regulation Y; in riskless principal activities, pursuant to § 225.28(b)(7)(ii) of Regulation Y; in financial and investment advisory activities, pursuant to § 225.28(b)(6) of Regulation Y; in activities related to extending credit, pursuant to § 225.28(b)(2) of Regulation Y; in private placement activities, pursuant to § 225.28(b)(7)(iii) of Regulation Y.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. BOK Financial Corporation, Tulsa, Oklahoma; to engae *de novo* through its subsidiary, BOSC, Inc., Tulsa, Oklahoma (formerly known as Alliance Securities, Inc.), in expanding the types of securities it has authority to underwrite to include Tier 2 level underwriting and dealing authority. This authority covers all types of debt and equity securities, including without limitation, sovereign debt securities, corporate debt, debt securities convertible into equity securities, and securities issued by a trust or other vehicle secured by or representing interests in debt obligations; and underwriting equity securities, including without limitation, common and preferred stock, American Depositary Receipts, and other direct and indirect equity ownership interests in corporations and other entities activities; *See J.P. Morgan & Co., Inc.T1, 75 Fed. Res. Bull. 192 (1989).*

Board of Governors of the Federal Reserve System, October 20, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–28556 Filed 10–23–98; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0022]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Hearing Aid Devices: Professional and Patient Package Labeling and Conditions for Sale

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by November 25, 1998.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

Hearing Aid Devices: Professional and Patient Package Labeling and Conditions for Sale—21 CFR 801.420 and 801.421 (OMB Control Number 0910–0171—Extension)

Under section 520(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(e)), the Secretary of the Department of Health and Human Services may, under certain conditions, require by regulation that a device be restricted to sale, distribution, or use only upon authorization of a licensed practitioner or upon other prescribed conditions. Sections 801.420 and 801.421 (21 CFR 801.420 and 801.421) implement this authority for hearing aids, which are restricted devices. The regulations require that the manufacturer or distributor provide to the user data useful in selecting, fitting, and checking the performance of a hearing aid through distribution of a user instructional brochure. The user instructional brochure must also contain technical data about the device, instructions for its use, maintenance, and care, a warning statement, a notice about the medical evaluation requirement, and a statement if the hearing aid is rebuilt or used.

Hearing aid dispensers are required to provide the prospective user, before the sale of a hearing aid, with a copy of the user instructional brochure for the hearing aid model that has been, or may be, selected for the prospective user and to review the contents of the brochure with the buyer. In addition, upon request by an individual who is considering the purchase of a hearing aid, the dispenser is required to provide a copy of the user instructional brochure for that model hearing aid or the name and address or telephone number of the manufacturer or distributor from whom a user instructional brochure for the hearing aid may be obtained. Under conditions of sale of hearing aid devices, manufacturers or distributors shall provide sufficient copies of the user instructional brochure to sellers for distribution to users and prospective

users and provide a copy of the user instructional brochure to any health care professional, user, or prospective users who requests a copy in writing. The regulations also require that the patient provide a written statement that he or she has undergone a medical evaluation within the previous 6 months before the hearing aid is dispensed, although informed adults may waive the medical evaluation requirement by signing a written statement. Finally, the regulation requires that the dispenser retain, for 3 years, copies of all physician statements or any waivers of medical evaluations.

The information obtained through this collection of information is used by FDA to ensure that hearing aids are sold and used in a way consistent with the public health.

The information contained in the user instructional brochure is intended not only for the hearing aid user but also for the physician, audiologist, and dispenser. The data is used by these health care professionals to evaluate the suitability of a hearing aid, to permit proper fitting of it, and to facilitate repairs. The data also permits the comparison of the performance characteristics of various hearing aids. Noncompliance could result in a substantial risk to the hearing impaired because the physician, audiologist, or dispenser would not have sufficient data to match the aid to the needs of the user.

The respondents to this collection of information are hearing aid manufacturers, distributors, dispensers, health professionals, or other for profit organizations.

In the **Federal Register** of June 30, 1998 (63 FR 35601), the agency requested comments on the proposed collection of information imposed on hearing aid manufacturers under §§ 801.420 and 801.421. FDA received one comment from an association representing hearing aid manufacturers. The comment stated that FDA underestimated the burden for preparing a user instructional brochure as required by § 801.420(c). The association stated that their member companies produced at least 18 different models of hearing aids and not the 5 assumed by FDA. The comment further stated that, because some models offer different features, their companies produced, on the average, 24 brochures for their 18 models. Finally, the comment stated that their member companies required not 40 hours, but at least 136 hours to produce a user instructional brochure.

FDA agrees in part with the comment. FDA agrees that the number of models produced are more than the five originally estimated by FDA. FDA notes, however, that the estimates proposed by FDA are annual burdens. Not all 18 models and 6 variations cited by the comment are new every year. Therefore, it is not necessary to prepare a new user instructional brochure for each of these every year. In addition, much of the information in the brochure can be transferred from one model brochure to the brochure for the successor model.

Based on premarket notification submissions, FDA estimates that approximately half of the models are significantly revised each year and others may be revised less significantly. FDA accepts the estimate of 136 hours for preparing a new brochure, but believes that an estimate of half that time or 68 hours is more appropriate for preparing a revised brochure.

The burden estimate for § 801.420(c) is calculated as follows: It is estimated that it will take 40 manufacturers 136 hours each to prepare 12 new brochures a year, which calculates to 65,280 hours. It is estimated that it will take those 40 manufacturers 68 hours to prepare 12 revised brochures a year, which calculates to 32,640 hours. Therefore, FDA estimates that it will take an average of 102 hours to prepare 24 brochures a year, which calculates to 97,920 hours.

FDA estimates the total burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
801.420(c)	40	24	960	102	97,920
801.421(b)	9,900	162	1,600,000	0.30	480,000
801.421(c)	9,900	5	49,700	0.17	8,449
Totals					586,369

[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
801.421(d)	9,900	162	1,600,000	0.25	400,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

In the notice published in the **Federal Register** of June 30, 1998, § 801.421(a)(1) and (a)(2) were listed as imposing reporting burdens on the public. These provisions have been removed from the burden chart in this notice. Section 801.421(a)(1) imposes no reporting requirements on hearing aid dispensers, but appears to impose a burden upon patients, who must submit to the hearing aid dispenser an evaluation form (or a waiver under § 801.421(a)(2)) under this provision prior to purchasing a hearing aid. This requirement is exempted from the definition of information because it consists of facts obtained from individuals in connection with direct treatment of a disorder (5 CFR 1320.3(h)(5)). Section 801.421(a)(2) requires dispensers to disclose to patients, prior to selling a hearing aid, that exercising the waiver of the evaluation form ''is not in the patient's best health interest'' (801.421(a)(2)(i)). This disclosure does not constitute a ''collection of information'' because it is a ''public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)). Hence, the burden

hours for these two provisions have been removed from the chart.

For the § 801.421(b) estimate in Table 1 of this document, FDA assumes that 9,900 hearing aid dispensers will have 162 sales annually (1.6 million sales , the current number of annual hearing aid sales, divided by 9,900 dispensers). For all such sales, the dispenser must provide the prospective user a copy of the user instructional brochure and the opportunity to read and review the contents with him/her orally, or in the predominant method used during the sale. FDA estimates that this exchange will involve .30 staff hours.

The § 801.421(c) estimate in Table 1 of this document assumes that 9,900 dispensers (which includes 40 hearing aid manufacturers/distributors) will provide copies of the user instructional brochure to any health care professional, user, or prospective user who requests a copy in writing. It is estimated that five written requests for copies of the brochures will be received by each hearing aid manufacturer/distributor and dispenser annually. It is estimated that each request for a brochure will take .17 staff hours to complete. This effort consists of the hearing aid manufacturer/distributor or hearing aid dispenser locating the appropriate user instructional brochure for the specific model and mailing the brochure to the requester.

The § 801.421(d) recordkeeping estimate in Table 2 of this document assumes that 9,900 hearing aid dispensers will each retain 162 records. Each record documents the dispensing of a hearing aid to a hearing aid user. Each recordkeeping entry is estimated to require 0.25 staff hours.

Dated: October 14, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–28578 Filed 10–23–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of November 1998.

Name: National Advisory council on Nurse Education and Practice.

Date and Time: November, 19, 1998; 8:30 a.m.–5:00 p.m.; November, 20, 1998; 8:30 a.m.–3:00 p.m.

Place: Chesapeake Room, Silver Spring Holiday Inn, 8777 Georgia Avenue, Silver Spring, Maryland 20910.

The meeting is open to the public.

Agenda: Updates on and discussion of Agency, Bureau and Division activities, and the legislative and budget status of programs; review of final draft of the clinical nurse specialist report, Federal Support for the Preparation of the Clinical Nurse Specialist Workforce Through Title VIII; and deliberation of the draft report of a national agenda for diversity in nursing.

Anyone interested in obtaining a roster of members, minutes of the meeting, or other relevant information should write or contact Ms. Elaine G. Cohen, Executive Secretary, National Advisory Council on Nurse Education and Practice, Parklawn Building, Room 9–35, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–5786.

Agenda items are subject to change as priorities dictate.

Dated: October 19, 1998.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 98–28524 Filed 10–23–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of 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 a meeting of the National Cancer Institute Director's Consumer Liaison Group.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 55b(c)(6), Title 5 U.S.C., as amended because the premature disclosure of discussions would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Director's Consumer Liaison Group.

Date: October 26–27, 1998.

Open: October 26, 1998, 9:00 am to 4:00 pm.

Agenda: Confidentiality, Peer Review, Consumer Advocates, Legislative Update, Informed Consent, Bypass Budget and other committee business.

Place: DoubleTree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Closed: October 26, 1998, 4:00 pm to 5:00 pm.

Agenda: To review and evaluate committee member information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Place: DoubleTree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Open: October 27, 1998, 9:00 am to 2:00 pm.

Agenda: Reports and discussion focusing on NCI's activities for Special Populations and DCLG Members participation in other NCI advisory committees.

Place: DoubleTree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Eleanor Nealon, Director, Office of Liaison Activities Building 31—Room 10A16, 9000 Rockville Pike, Rockville, MD 20892, 301–594–3194.

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. 93.392, 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: October 20, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–28614 Filed 10–23–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood 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: Heart, Lung, and Blood Program Project Review Committee.

Date: December 3, 1998.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Jeffrey H. Hurst, PHD, Scientific Review Administration, Review Branch, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7208, Bethesda, MD 20892, 301/435–0303.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: October 19, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–28611 Filed 10–23–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and person 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: November 12, 1998.

Time: 4:00 pm to 6:00 pm.

Agenda: To review and evaluate grant applications.

Place: Parklawn Building—Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, (Telephone Conference Call).

Contact Person: Victoria S. Levin, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–26, Rockville, MD 20857.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: November 23, 1998.

Time: 11:30 am to 1:30 pm.

Agenda: To review and evaluate grant applications.

Place: Parklawn Building—Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, (Telephone Conference Call).

Contact Person: Russell E. Martenson, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9–101, Rockville, MD 20857, 301–443–3936.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: November 24, 1998.

Time: 12:30 pm to 2:30 pm.

Agenda: To review and evaluate grant applications.

Place: Parklawn Building—Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, (Telephone Conference Call).

Contact Person: Russell E. Martenson, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9–101, Rockville, MD 20857, 301–443–3936.

(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: October 20, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–28607 Filed 10–23–98; 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 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of person private.

Name of Committee: National Institute of Mental Special Emphasis Panel.

Date: November 18, 1998.

Time: 9:00 AM to 1:00 PM.

Agenda: To review and evaluate contract proposals.

Place: One Washington Circle Hotel, One Washington Circle, NW., Washington, DC 20037.

Contact Person: Russell E. Martenson, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building 5600 Fishers Lane, Room 9–101, Rockville, MD 20857 301–443–3936.

(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: October 20, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–28608 Filed 10–23–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel RFP–NIH–NIAID–DAIT–BAA–99–04

Date: November 16–17, 1998.

Time: November 16, 1998, 8:30 a.m. to adjournment.

Agenda: To review and evaluate contract proposals.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20852.

Contact Person: Priti Mehrotra, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Solar Building, Room 4C14, 6003 Executive Boulevard MSC 7610, Bethesda, MD 20892–7610, 301–496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 20, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–28609 Filed 10–23–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(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 Allergy and Infectious Diseases Special Emphasis Panel To evaluate a grant application.

Date: November 3, 1998.

Time: 1:30 p.m. to adjournment.

Agenda: To review and evaluate grant applications.

Place: 6003 Executive Blvd, Solar Bldg. Room 4C06, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Stanley C. Oaks, PHD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Solar Building, Room 4C06, 6003 Executive Boulevard MSC 7610, Bethesda, MD 20892–7610, 301–496–7042.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.856, Microbiology and Infectious Diseases Research; 93.855, Allergy, Immunology, and Transplantation Research, National Institutes of Health, HHS)

Dated: October 20, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–28610 Filed 10–23–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; 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: Center for Scientific Review Special Emphasis Panel ZRG1, PC (02).

Date: October 21, 1998.

Time: 8:00 PM to 9:00 PM.

Agenda: To review and evaluate grant applications.

Place: St. James Hotel, 950 24th Street, N.W., Washington, DC 20037.

Contact Person: Richard Panniers, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, 7842, Bethesda, MD 20892, (301) 435–1741.

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. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 19, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–28612 Filed 10–23–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; 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: Center for Scientific Review Special Emphasis Panel, Integrative Functional and Cognitive Neuroscience.

Date: October 27–28, 1998.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: John Bishop, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

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: Center for Scientific Review Special Emphasis Panel.

Date: October 27, 1998.

Time: 5:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Old Town Alexandria, Alexandria, VA 22314.

Contact Person: J. Terrell Hoffeld, PHD, DDS, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, (301) 435–1781.

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: Immunological Sciences Initial Review Group, Immunological Sciences Study Section.

Date: October 28–29, 1998.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Alexander D. Politis, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, (301) 435–1225.

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: Infectious Diseases and Microbiology Initial Review Group, Microbial Physiology and Genetics Subcommittee 1.

Date: October 28–29, 1998.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, Chevy Chase, MD 20815.

Contact Person: Martin L. Slater, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7808, Bethesda, MD 20892, (301) 435–1149.

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: Nutritional and Metabolic Sciences Initial Review Group, Metabolism Study Section.

Date: October 29–30, 1998.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, Washington, DC 20007.

Contact Person: Krish Krishnan, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 435–1041.

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: Center for Scientific Review Special Emphasis Panel.

Date: October 29–30, 1998.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn-Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Joe Marwah, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892, (301) 435–1253.

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: Biobehavioral and Social Sciences Initial Review Group, Behavioral Medicine Study Section.

Date: October 29–30, 1998.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: St. James Hotel, 950 24th Street, NW., Washington, DC 20037.

Contact Person: Carol A. Campbell, MSW, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7848, Bethesda, MD 20892, (301) 435–1257.

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: Endocrinology and Reproductive Sciences Initial Review Group, Human Embryology and Development Submcommittee 1.

Date: October 29–30, 1998.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Michael Knecht, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892, (301) 435–1046.

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: Biobehavioral and Social Sciences Initial Review Group Human Development and Aging Subcommittee 3.

Date: October 29–30, 1998.

Time: 9:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Chevy Chase Pavilion, 4300 Military Road, NW, Washington, DC 20015.

Contact Person: Anita Miller Sostek, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7848, Bethesda, MD 20892, (301) 435–1260.

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: Center for Scientific Review Special Emphasis Panel ZRG1–SSS–X (10).

Date: October 29–31, 1998.

Time: 7:00 AM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: Swissotel Boston, One Avenue De Lafayette, Boston, MA 02111.

Contact Person: Lee Rosen, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

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. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 19, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–28613 Filed 10–23–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program (NTP) Board of Scientific Counselors' Meeting; Review of Nominations for Listing in or Delisting From the 9th Report on Carcinogens

Pursuant to Public Law 92–463, notice is hereby given of the next meeting of the NTP Board of Scientific Counselors' Report on Carcinogens (RoC) Subcommittee to be held on December 2 & 3, 1998, in the Conference Center, Building 101, South Campus, National Institute of Environmental Health Sciences (NIEHS), 111 Alexander Drive, Research Triangle Park, North Carolina. The meeting will begin at 8:30 a.m. both days and is open to the public. The agenda topics are the peer review of substances, mixtures, or exposure circumstances nominated for listing in or delisting from the 9th Report on Carcinogens, and the provision of the opportunity for public input.

Background

The process for preparation of the Report on Carcinogens (RoC) has three levels of scientific peer review. Central to the evaluations of the review groups is the use of revised criteria, for inclusion in or removal of substances from the Report, which were approved by the Secretary, Department of Health and Human Services (DHHS), in September 1996. The major change in the RoC which occurred as a result of the criteria revision was to include consideration of all relevant information, including mechanistic data, in the decision to list in or delist from future volumes. To broaden the scope of scientific review and broaden input to preparation of the Report, a new standing subcommittee of the NTP Board of Scientific Counselors was established in 1996. The meeting on December 2 & 3 will be the third meeting at which the RoC Subcommittee has conducted public review of nominations. The current review process for review of petitions considered by the NTP for listing in or delisting from the RoC begins with initial scientific review by the NIEHS/NTP Report on Carcinogens Review Committee (RG1). The RG1 is comprised of NIEHS/NTP staff scientists. The second scientific review phase is done by the NTP Executive Committee's Working Group for the Report on Carcinogens (RG2). RG2 is comprised of representatives of the Federal health research and regulatory agencies on the

Executive Committee. The third level of review is the external public review by the RoC Subcommittee and includes time for public comments. The independent recommendations of the three scientific peer review groups and all public comments are presented to the NTP Executive Committee for review and comment. The Director, NTP, receives the four independent recommendations and makes NTP recommendations regarding listing or delisting to the Secretary, DHHS.

Agenda

Tentatively scheduled to be peer reviewed on December 2 & 3 are 11 nominations. An alphabetical listing of the nominations with supporting information follows this announcement. The table notes the tentative order of presentation and review in the right hand column, and gives primary uses or exposures and the category for which they were originally nominated. Draft background documents on each of the nominations will be provided to Board Subcommittee reviewers around November 1. Paper copies of draft background documents can be obtained, as available, from: the Board Executive Secretary, Dr. Larry G. Hart, P.O. Box 12233, Research Triangle Park, NC 27709 (telephone 919/541–3971; FAX 919/541–0295; emailhart@niehs.nih.gov.)

Public Input Encouraged

The entire meeting is open to the public and time will be provided for public comment on each of the nominations being reviewed. In order to facilitate planning for the meeting, persons wanting to make a formal presentation regarding a particular nomination must notify the Executive Secretary by telephone, by FAX, by mail, or by email no later than November 30, 1998, and, if possible, provide a written copy of their statement in advance of the meeting. Written statements should supplement and may expand on the oral presentation, or may be submitted in lieu of an oral presentation, and should be received by November 30 so copies can be made for distribution to Subcommittee members and staff and made available for the public. All attempts will be made to send statements received by November 24 to Subcommittee members in advance of the meeting. *Oral presentations must be limited to no more than five minutes.*

Upon request, the Executive Secretary, Dr. Larry G. Hart, at the address given above, will furnish the agenda and a roster of Subcommittee members prior to the meeting. Summary minutes subsequent to the meeting will be available upon request.

Attachment.

Dated: October 16, 1998.

Kenneth Olden,

Director, National Toxicology Program.

SUMMARY DATA FOR NOMINATIONS TENTATIVELY SCHEDULED FOR REVIEW AT THE MEETING OF THE NTP BOARD OF SCIENTIFIC COUNSELORS' REPORT ON CARCINOGENS SUBCOMMITTEE DECEMBER 2 & 3, 1998

Nomination/CAS No.	Primary uses or exposures	To be reviewed for	Tentative review order
Alcoholic Beverages	Consumption of alcoholic beverages	Listing in the 9th Report	3
Boot and Shoe Manufacture and Repair.	Workers in the boot and shoe manufacture and repair industry.	Listing in the 9th Report	11
Diesel Particulates	Diesel engine exhaust	Listing in the 9th Report	7
Environmental Tobacco Smoke.	''Passive'' inhalation of tobacco smoke from environmental sources.	Listing in the 9th Report	4
Ethyl Acrylate/140–88–5	Monomer used to produce polymers and copolymers for use in latex paints, textiles, etc.	Delisting from the Report on Carcinogens	9
Ethylene Oxide/75–21–8	Industrial chemical used as an intermediate in the manufacture of other chemicals; e.g., ethylene glycol and is widely used in the health care industry as a sterilant.	Change current listing to the *Known to be a Human Carcinogen* category.	6
Isoprene/78–79–5	The monomeric unit of natural rubber and naturally occurring terpenes and steroids and widely used in the production of isoprene-butadiene copolymers.	Listing in the 9th Report	2
Methyl-t-Butyl Ether/1634–04–4.	Used as an additive in unleaded gasoline in amounts up to 11%.	Listing in the 9th Report	8
Nickel Compounds	Many industrial and commercial applications	Change current listing to the *Known to be a Human Carcinogen* category.	10
Silica, Crystalline/7631–86–9.	Exposure from mining and quarrying of coal and other minerals, stone cutting, production of glass and ceramics and in occupations such as sandblasting, polishing and grinding.	Change current listing to the *Known to be a Human Carcinogen* category.	5
2,3,7,8-Tetrachloro-dibenzo-p-dioxin (TCDD)/1746–01–6.	Not used commercially, used only as a research chemical. Potential exposure from municipal incinerators, dump sites and contaminated soil.	Change current listing to the *Known to be a Human Carcinogen* category.	1

[FR Doc. 98–28606 Filed 10–23–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4381–D–01]

Delegation of Authority Concerning Sanctions Amendment of Existing Delegations and Redelegations of Authority

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority; and amendment of existing delegations and redelegations of authority.

SUMMARY: This notice amends existing delegations and redelegations of authority to issue the administrative sanctions of suspension, debarment, and limited denial of participation (LDP)

under 24 CFR part 24. This amendment also requires that the Office of General Counsel at Headquarters concur in any proposed sanction under part 24 prior to its issuance, and additionally, concur in any proposed settlement or resolution of such sanction after its issuance. In addition, this notice delegates to the Director of the Enforcement Center the authority to issue a suspension, debarment, or LDP under 24 CFR part 24.

EFFECTIVE DATE: October 16, 1998.

FOR FURTHER INFORMATION CONTACT: Emmett N. Roden, Deputy Chief Counsel, Administrative Proceedings Branch, Enforcement Center, Department of Housing and Urban Development, Portals Building, Suite 200, 1250 Maryland Avenue, SW, 20024, Washington, D.C. 20410, (202) 708–3856. This is not a toll-free number. For hearing/speech-impaired individuals, this number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8399.

SUPPLEMENTARY INFORMATION: HUD's regulations at 24 CFR 24.100 and 24.700 provide that officials designated by the Secretary are authorized to issue sanctions, such as suspensions, debarments, and limited denials of participation (''LDPs''). By delegations of authority published on October 7, 1988 (53 FR 39535) and January 31, 1989 (54 FR 4913), the Secretary delegated the authority to issue suspensions and debarments to the Assistant Secretaries, the Inspector General, and the President of the Government National Mortgage Association. By delegation of authority published on April 15, 1994 (59 FR 18276), the Secretary delegated the authority to issue LDPs to the Assistant Secretaries for Housing-Federal Housing Commissioner, Community Planning and Development, Fair Housing and Equal Opportunity, Public and Indian Housing, and Administration.

The authority to issue LDPs has been delegated and/or redelegated to other officials. These include a concurrent delegation of authority published on December 14, 1993 (58 FR 65373), where the Secretary delegated to the Deputy Assistant Secretary of Operations, Office of Community Planning and Development (CPD), the power and authority of the Assistant Secretary for CPD; and redelegations of authority published on: (1) July 7, 1994 (59 FR 34857), where the Assistant Secretary for Housing-Federal Housing Commissioner redelegated the authority to issue LDPs to the Department's Deputy Assistant Secretary for Multifamily Housing Programs and the Deputy Assistant Secretary for Single Family Housing; (2) June 6, 1995 (60 FR 29862), where the Assistant Secretary for Housing-Federal Housing Commissioner redelegated to certain HUD officials in local field offices the power and authority to issue LDPs pertaining to all housing programs; (3) August 14, 1995 (60 FR 41894), where the General Deputy Assistant Secretary for CPD redelegated authority to issue LDPs to the Director, Office of Technical Assistance and Management; and (4) September 11, 1995 (60 FR 47177), where the Assistant Secretary for Public and Indian Housing redelegated power and authority to issue LDPs to certain HUD officials in field offices. Also included is an unpublished redelegation dated February 15, 1998 from the Assistant Secretary for Housing-Federal Housing Commissioner to the field concerning the issuance of LDPs in connection with of Multifamily Housing and Hospital Insurance programs.

This notice amends the above delegations and redelegations of authority by requiring that, before a sanction is issued under 24 CFR part 24, the General Counsel, or other official designated by the General Counsel, must concur in it. Additionally, the General Counsel, or other such designated official, must concur in any settlement of a sanction under 24 CFR Part 24. This notice also delegates to the Director of the Enforcement Center the authority to initiate suspensions, debarments, and LDPs with respect to programs conducted by all offices of this Department.

Section A. Delegation of Authority

The Director of the Enforcement Center of the Department of Housing and Urban Development is hereby authorized to issue suspensions, debarments, and limited denials of participation, under 24 CFR part 24. The General Counsel, or such other official as may be designated by the General Counsel, must: (1) concur in any such proposed sanction under part 24 before it is issued, and (2) concur in any proposed settlement of a sanction under part 24.

Section B. Amendment of Delegations and Redelegations

All delegations and redelegations are hereby amended to require that the General Counsel, or such other official as may be designated by the General Counsel, must: (1) Concur in any proposed sanction under part 24 before it is issued, and (2) concur in any proposed settlement of a sanction under part 24. These delegations and redelegations include those published in the **Federal Register** at 53 FR 39535 (October 7, 1988); 54 FR 4913 (January 31, 1989); 59 FR 18276 (April 15, 1994); 58 FR 65373 (December 14, 1993); 59 FR 34857 (July 7, 1994); 60 FR 29862 (June 6, 1995); 60 FR 41894 (August 14, 1995); and 60 FR 47177 (September 11, 1995). Also included is an unpublished delegation dated February 15, 1998 from the Assistant Secretary for Housing—Federal Housing Commissioner to the field concerning the management of Multifamily Housing and Hospital Insurance programs.

Authority: Sec. 7(d), Department of Housing and Urban Development Act (42 USC 3535(d)).

Dated: October 16, 1998.

Andrew Cuomo,

Secretary of Housing and Urban Development.

[FR Doc. 98–28523 Filed 10–23–98; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4352–N–09]

Announcement of OMB Approval Number for Part 941—Public Housing Agency (PHA) Development Cost Budget/Cost Statement, Actual Development Cost Certificate, Acquisition and Relocation

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of OMB approval number.

SUMMARY: The purpose of this notice is to announce the OMB approval number for the collection of information pertaining to Section 941.205 which request the Public Housing Agency (PHA) to submit contracts/certificate, HUD–52427, HUD–52484, required for the development of public housing for review and approval by HUD.

FOR FURTHER INFORMATION CONTACT: William Flood, Director, Office of Capital Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1640. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), this notice advises that OMB has responded to the Department's request for approval of the information collection pertaining to 24 CFR part 941, Public Housing Agency

(PHA) Development Cost Budget/Cost Statement, Actual Development Cost Certificate, Acquisition and Relocation.

The OMB approval number for this information collection is 2577–0036, which expires on July 31, 2000.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number.

Dated: October 19, 1998.

Deborah Vincent,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 98–28551 Filed 10–23–98; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4352–N–10]

Announcement of OMB Approval Number for Part 941—Public Housing Development and Mixed-Finance Development of Units: Proposal, Financial Feasibility, Site Information, Turnkey Method, Evidentiary Materials

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of OMB approval number.

SUMMARY: The purpose of this notice is to announce the OMB approval number for the collection of information pertaining to Sections 941.101, 941.303, 941.606, 941.610 which requires the Public Housing Agency (PHA) to submit information for the development of public housing for review and approval by HUD.

FOR FURTHER INFORMATION CONTACT: William Flood, Director, Office of Capital Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1640. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), this notice advises that OMB has responded to the Department's request for approval of the information collection pertaining to 24 CFR part 941, Public Housing Development and Mixed-Finance Development of Units: Proposal, Financial Feasibility, Site Information, Turnkey Method, Evidentiary Materials.

The OMB approval number for this information collection is 2577–0033, which expires on December 31, 2000.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number.

Dated: October 19, 1998.

Deborah Vincent,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 98–28552 Filed 10–23–98; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–00–P; AA–10751]

Alaska; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(h) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h), will be issued to Chugach Alaska Corporation for approximately 1.4 acres. The lands involved are in the vicinity of Culross Passage, Alaska.

Seward Meridian, Alaska

T. 6 N., R. 7 E.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Anchorage Daily News.* Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until November 25, 1998 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Chris Sitbon,

Land Law Examiner, ANCSA Team, Branch of 962 Adjudication.

[FR Doc. 98–28559 Filed 10–23–98; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–060–7122–00–5542; AZA–28350]

Notice of Availability of Draft Environmental Impact Statement for the Ray Land Exchange/Plan Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability, Draft Environmental Impact Statement (DEIS)/Plan Amendment.

SUMMARY: The Bureau of Land Management (BLM), Arizona State Office and Tucson Field Office, in response to a land exchange proposal from ASARCO Incorporated (Asarco) has prepared a DEIS in compliance with the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Federal Land Exchange Facilitation Act, and the National Environmental Policy Act of 1969. The land exchange DEIS is combined with a plan amendment which considers amending the Phoenix and Safford District Resource Management Plans (RMPs) under BLM planning regulations (43 CFR part 1600) for the purpose of exchanging public lands pursuant to Section 206 of FLPMA. Asarco has proposed to exchange 10,976 acres of federal lands or minerals in Pinal and Gila counties for 7,304 acres of private lands in Pinal and Mohave counties. A plan amendment is required for all but 637 acres of the federal lands since prior land tenure decisions were to retain these parcels or mineral estate in federal ownership.

ADDRESSES FOR FURTHER INFORMATION CONTACT: Copies of the Draft EIS may be requested from: Shela McFarlin, Project Manager, Bureau of Land Management, Arizona State Office, 222 N. Central, Phoenix, AZ 85004, or by telephone (602) 417–9568. Copies are available for public review at: BLM Phoenix Field Office, 2015 West Deer Valley Rd., Phoenix, AZ. 85027; BLM Tucson Field Office, 12661 East Broadway, Tucson, AZ. 85748; BLM Kingman Field Office, 2475 Beverly Avenue, Kingman, AZ. 86401; Public Libraries in Mesa, Kingman and Kearny; and the Arizona State University, Hayden Library, Tempe, AZ; Public Comments and Meetings: Public meetings will be held in: Kearny, Arizona on December 8, 1998 from 5:00 to 7:00 pm at the Constitution Hall (Senior Citizen Center), 912 East Tilbury Drive; in Mesa, Arizona on December 9, 1998 from 5:00 to 7:00 p.m., Mesa Community College, Kirk Student

Center, Lower Level Kiva Room; and, in Kingman, Arizona on December 10, 1998 5:00 to 7:00 pm, City of Kingman Town Hall, Lower Level, Fire Dept. Room. Public meetings will consist of a short presentation on the project at 5:00 pm followed by a formal hearing for public comments. Written comments may be sent additionally to the address below. Public comments will be accepted and considered if postmarked by January 28, 1999. Please note that comments, including names and street addresses of respondents are available for public review and may be published as part of the Final EIS, or other related documents. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials or organizations or businesses, will be made available for public inspection in their entirety.

ADDRESSES: Written comments concerning the plan amendment/EIS must be submitted to Bureau of Land Management, Attn: Shela McFarlin, Project Manager, Arizona State Office (AZ–917), 222 N. Central, Phoenix, Arizona 85004.

FOR FURTHER INFORMATION CONTACT: Shela McFarlin, at the above address, (602) 417–9568.

SUPPLEMENTARY INFORMATION: Federal (public) lands (in Pinal and Gila counties) being analyzed for exchange include federal mineral estate (2,780 acres) and federal surface and mineral estate (8,196 acres). Most of these parcels surround the Ray Mine and Hayden Complex operated by ASARCO Incorporated; or, these consist of future prospects for mineral development or support, including 637 acres near Casa Grande. The non-federal lands to be offered to the BLM include high resource values such as: wilderness inholdings or areas adjacent to the Mt. Tipton and Sacramento Valley Wilderness, hydroriparian zone along the Gila River, desert tortoise category I and II habitat, and checkerboard inholdings within the McCracken Area of Critical Environmental Concern. These parcels are located within Mohave (mainly) and Gila counties.

Dated: October 20, 1998.

Jesse J. Juen,

Field Manager.

[FR Doc. 98–28558 Filed 10–23–98; 8:45 am]

BILLING CODE 4310–32–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 63, No. 194, at 53,937, October 7, 1998.

Previously Announced

TIME AND DATE: 2:00 p.m., Wednesday, October 14, 1998.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

CHANGES IN THE MEETING: The time of the Commission meeting to consider and act upon the following item was changed to immediately follow the conclusion of oral argument in *Secretary of Labor* v. *Arch of Kentucky*, Docket No. KENT 97–197, which commenced at 10:00 a.m., October 14, 1997.

1. *Secretary of Labor* v. *Arch of Kentucky*, Docket No. KENT 97–197 (Issues include whether the judge erred in determining that the operator violated 30 C.F.R. § 75.1403–6(b)(3)'s requirement that each track-mounted self-propelled personnel carrier be equipped with properly installed and well-maintained sanding devices, and that the violation was significant and substantial.)

TIME AND DATE: 2:00 p.m., Wednesday, October 28, 1998.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission shall consider and act upon the following:

1. *Secretary of Labor* v. *Bellefonte Lime Co.*, Docket No. PENN 95–467 (Issues include whether the judge correctly concluded that a violation of 30 C.F.R. § 56.3200 by Bellefonte Lime was not significant and substantial, and whether the judge erred in failing to reach the issue of unwarrantable failure.)

Any person attending an open meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 C.F.R. § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Dated: October 20, 1998.

Jean H. Ellen,

Chief, Docket Clerk.

[FR Doc. 98–28740 Filed 10–22–98; 8:45 am]

BILLING CODE 6735–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (98–155)]

NASA Advisory Council (NAC), Task Force on International Space Station Operational Readiness; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting change.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 63 FR 188, Notice Number 98–134, September 29, 1998.

PREVIOUSLY ANNOUNCED DATE AND ADDRESS OF MEETING: Tuesday, November 3, 1998, 10:00 a.m.–3:00 p.m.; NASA Headquarters, 300 E Street, SW, Room 5H46, Washington, DC 20546.

CHANGES IN THE MEETING: Date remains November 3, 1998; Time changed to 9:00 a.m.–3:00 p.m. Central Standard Time; Address changed to Lyndon B. Johnson Space Center, NASA, Building 1, Room 920L, Houston, TX 77058–3696.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis McSweeney, Code IH, National Aeronautics and Space Administration, Washington, DC 20546–0001, 202/358–4556.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Review the results of the IOR Task Force Working Group on International Space Station Software assessment.

—Review the results of the IOR Task Force Working Group on International Space Station Training assessment.

—Receive a briefing from the International Space Station Program Office on the current status of the International Space Station.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

Dated: October 19, 1998.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 98–28527 Filed 10–23–98; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (98–154)]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Solar System Exploration Subcommittee; Meeting

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Space Science Advisory Committee, Solar System Exploration Subcommittee.

DATES: Monday, November 16, 1998, 8:30 a.m. to 5:00 p.m.; Tuesday, November 17, 1998, 8:30 a.m. to 5:00 p.m.

ADDRESSES: National Aeronautics and Space Administration, MIC 7, Room, 7H46 300 E Street, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Carl Pilcher, Code S, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–2470.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting is as follows:

—Solar System Exploration Program update: Personnel, Budget, Current and Programs
—Technology program structure
—Genesis mission summary
—Mars architecture implementation update
—Strategic planning process introduction

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: October 16, 1998.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 98–28526 Filed 10–23–98; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (98–156)]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science Advisory Committee.

DATES: Wednesday, November 18, 1998, 8:30 a.m. to 5:30 p.m.; Thursday, November 19, 1998, 8:00 a.m. to 5:45 p.m.; Friday, November 20, 1998, 8:30 a.m. to 12:30 p.m.

ADDRESSES: MIC 7, NASA Headquarters, 300 E Street, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Jeffrey Rosendhal, Code S, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–2470.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting is as follows:

—OSS Program and Budget Status
—Astrobiology Implementation Plan/Roadmap
—Mars Program Architecture
—Research Program Update
—Theme Status Reports/Reports from Subcommittees
—Science Operations Management Office Update
—Technology Program Update

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: October 19, 1998.

Matthew Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 98–28528 Filed 10–23–98; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before November 25, 1998 to be assured of consideration.

ADDRESSES: Comments should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Ms. Maya Bernstein, Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–713–6730 or fax number 301–713–6913.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on August 11, 1998 (63 FR 42882). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. In this notice, NARA is soliciting comments concerning the following information collection:

Title: National Archives Order for Copies of Pension, Bounty Land Warrant Application files, and pre-WWI Military Service records.

OMB number: 3095–0032.

Agency form numbers: NATF Forms 85 and 86.

Type of review: Regular.

Affected public: Individuals who wish to order copies of Pension, Bounty Land Warrant Application files, and pre-WWI Military Service records in the National Archives of the United States.

Estimated number of respondents: 105,000.

Estimated time per response: 10 minutes.

Frequency of response: On occasion (when respondent wishes to search for or order copies of Pension, Bounty Land Warrant Application files, and pre-WWI Military Service records).

Estimated total annual burden hours: 17,500.

Abstract: The NATF forms 85 and 86 replace the currently used NATF form 80, National Archives Order for Copies of Veterans Records. The NATF form 85 will be used by researchers to request that NARA search for and make copies of pages from pension and bounty land warrant application files in the custody of the National Archives. The NATF form 86 will be used by researchers to request that NARA search for and make copies of pages of military service records from the pre-WWI (pre-1917) time period. Submission of requests on a form is necessary to handle in a timely fashion the volume of requests received for these records (approximately 52,000 per year for the NATF 85 and approximately 53,000 per year for the NATF 86) and the need to obtain specific information from the researcher to search for the records sought. The form will be printed on carbonless paper as a multi-part form to allow the researcher to retain a copy of his request and NARA to respond to the researcher on the results of the search or to bill for copies if the researcher wishes to order the copies. As a convenience, the form will allow researchers to provide credit card information to authorize billing and expedited mailing of the copies. NARA is working towards accepting electronic submission of requests and we intend to address security of financial information and other issues as we continue our efforts to increase electronic access to NARA and its holdings.

Dated: October 15, 1998.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 98–28590 Filed 10–23–98; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before November 25, 1998 to be assured of consideration.

ADDRESSES: Comments should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Ms. Maya Bernstein, Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–713–6730 or fax number 301–713–6913.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on August 11, 1998 (63 FR 42883 and 42884). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Researcher Application.

OMB Number: 3095–0016.

Agency form number: NA Forms 14003 and 14003A.

Type of review: Regular.

Affected public: Individuals or households, business or other for-profit, not-for-profit institutions, Federal, State, Local or Tribal Government.

Estimated number of respondents: 21,876.

Estimated time per response: 5 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 1,823 hours.

Abstract: The information collection is prescribed by 36 CFR 1254.4. The collection is an application for a research card. Respondents are individuals who wish to use original archival records in a NARA facility. NARA uses the information to screen individuals, to identify which types of records they should use, and to allow further contact.

Dated: October 16, 1998.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 98–28591 Filed 10–23–98; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL COUNCIL ON DISABILITY

Advisory Committee Conference Calls

AGENCY: National Council on Disability (NCD).

SUMMARY: This notice sets forth the schedule of the forthcoming conference calls for NCD's advisory committees—International Watch and Technology Watch. Notice of this meeting is required under Section 10(a)(1)(2) of the Federal Advisory Committee Act (P.L. 92–463).

INTERNATIONAL WATCH: The purpose of NCD's International Watch is to share information on international disability issues and to advise NCD's International Committee on developing policy proposals that will advocate for a foreign policy that is consistent with the values and goals of the Americans with Disabilities Act.

DATE: November 18, 1998, 12:00 noon—1:00 p.m. est

FOR INTERNATIONAL WATCH INFORMATION, CONTACT: Mark S. Quigley, Public Affairs Specialist, National Council on Disability, 1331 F Street NW, Suite 1050, Washington, D.C. 20004–1107; 202–272–2004 (Voice), 202–272–2074 (TTY), 202–272–2022 (Fax), mquigley@ncd.gov (e-mail).

TECHNOLOGY WATCH: NCD's Technology Watch (Tech Watch) is a community-based, cross-disability consumer task force on technology. Tech Watch provides information to NCD on issues relating to emerging legislation on technology and helps monitor compliance with civil rights legislation, such as Section 508 of the Rehabilitation Act of 1973, as amended.

DATE: November 20, 1998, 1:00 p.m.—3:00 p.m. est

FOR TECHNOLOGY WATCH INFORMATION, CONTACT: Jamal Mazrui, Program

Specialist, National Council on Disability, 1331 F Street NW, Suite 1050, Washington, D.C. 2004–1107; 202–272–2004 (Voice), 202–272–2074 (TTY), 202–272–2022 (Fax), jmazrui@ncd.gov (e-mail).

AGENCY MISSION: The National Council on Disability is an independent federal agency composed of 15 members appointed by the President of the United States and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature or severity of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

These committees are necessary to provide advice and recommendations to NCD on international disability issues and technology accessibility for people with disabilities.

We currently have balanced membership representing a variety of disabling conditions from across the United States.

OPEN CONFERENCE CALLS: These advisory committee conference calls of the National Council on Disability will be open to the public. However, due to fiscal constraints and staff limitations, a limited number of additional lines will be available. Individuals can also participate in the conference calls at the NCD office. Those interested in joining these conference calls should contact the appropriate staff member listed above.

Records will be kept of all International Watch and Tech Watch conference calls and will be available after the meeting for public inspection at the National Council on Disability:

Signed in Washington, DC, on October 21, 1998.

Ethel D. Briggs,

Executive Director.

[FR Doc. 98–28625 Filed 10–23–98; 8:45 am]

BILLING CODE 6820–MA–M

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: Nancy E. Weiss, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* November 6, 1998.
Time: 9:00 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Library & Archival Preservation and Access/Reference Materials, submitted to the Division of Preservation and Access at the July 1, 1998 deadline.

2. *Date:* November 10, 1998.
Time: 9:00 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Library & Archival Preservation and Access/Reference Materials, submitted to the Division of Preservation and Access at the July 1, 1998 deadline.

3. *Date:* November 13, 1998.
Time: 9:00 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Library & Archival Preservation and Access/Reference Materials, submitted to the Division of Preservation and Access at the July 1, 1998 deadline.

4. *Date:* November 23, 1998.
Time: 9:00 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Library & Archival Preservation and Access/Reference Materials, submitted to the Division of Preservation and Access at the July 1, 1998 deadline.

Nancy E. Weiss,

Advisory Committee Management Officer.

[FR Doc. 98–28605 Filed 10–23–98; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL GAMBLING IMPACT STUDY COMMISSION

Meeting

AGENCY: National Gambling Impact Study Commission.

ACTION: Notice of public meeting.

SUMMARY: At its sixth on-site meeting the National Gambling Impact Study Commission, established under Pub. L. 104–169, dated August 3, 1996, will hear presentations from invited panels of speakers, receive public comment, and conduct its normal meeting business.

DATES: Tuesday, November 10, 8:00 a.m. to 5:05 p.m. and Wednesday, November 11, 8:00 a.m. to 5:00 p.m.

ADDRESSES: The meeting site will be: MGM Grand Hotel/Casino, 121–123 Grand Ballroom, 3799 Las Vegas Blvd. South, Las Vegas, NV 89109.

Written comments can be sent to the Commission at 800 North Capitol Street, NW, Suite 450, Washington, DC 20002.

STATUS: The meeting will be open to the public both days. However, the Commission will enter executive session during its lunch period from 12:30 to 1:45 p.m. on November 10, 1998.

FOR FURTHER INFORMATION CONTACT: For further information contact Craig Stevens at (202) 523–8217 or write to 800 North Capitol St., NW, Suite 450, Washington, DC 20002.

SUPPLEMENTARY INFORMATION: The meeting agenda will include presentations from Federal, State and Local Officials; staff briefings on Sports Wagering and Youth and Adolescent Gambling; Presentations by expert panels on Sports Wagering, Neighborhood Gambling and Casinos Focused on Local Clientele, Gambling and Employment, Youth and Adolescent Gambling, Marketing, Advertising and Promotions, Industry Credit Practices and Procedures, and Nevada and Other Regulatory Models; normal meeting business; executive

session; and an open forum period for public comment.

An open forum for public participation will be held on November 10 from 4:05 to 5:05 p.m. on issues relevant to the Commission's work. Anyone wishing to make an oral presentation must contact Mr. Tim Bidwill by telephone only at (202) 523–8217 no later than 5:00 p.m. (EST), November 6, 1998. No requests will be accepted before 9:00 a.m. (PST) or 12:00 p.m. (EST) the day this notice appears in the **Federal Register**.

Callers will be asked to provide name, organization (if applicable), address, and daytime telephone number. Call-backs from staff may be required. No requests will be accepted via mail, facsimile, e-mail, or voice mail. A waiting list will be compiled once the allotted number of slots becomes filled. Oral presentations will be limited to three (3) minutes per speaker. If this is not enough time to complete comments, please restrict to three minutes a summary of your comments and bring a typed copy of full comments to file with the Commission. Persons speaking at a forum are requested, but not required, to supply twenty (20) copies of their written statements to the registration desk prior to the public comment period. Members of the public, on the waiting list or otherwise, are always invited to send written comments to the Commission at any time. However, if individuals wish to have their written comments placed into the official record of the meeting, the Commission must receive them by December 1, 1998. Each speaker is kindly asked to be prepared prior to their presentation; to refrain from any use of profanity, vulgar language, or obscene signage; to refrain from making any comments or disrupting sounds during the presentation of another speaker; and to remain seated. If visual aids are necessary during the course of a speaker's presentation, each speaker is responsible for providing the equipment to run the visual aid. A complete list of guidelines is available on the Commission's web site: *www.ngisc.gov*.

Tim Bidwill,

Special Assistant to the Chairman.

[FR Doc. 98–28564 Filed 10–23–98; 8:45 am]

BILLING CODE 6802–ET–P

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Bioengineering & Environmental Systems; 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 (1189).

Date & Time: November 19, 1998; 8:00 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 530, Arlington, VA 22230.

Contact Person: Dr. A. Frederick 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 CAREER 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: October 20, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–28533 Filed 10–23–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Electrical and Communications Systems; Notice of Meeting

In accord with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meetings:

Name: Special Emphasis Panel in Electrical and Communications Systems (1196).

Date and Time: November 16, 1998, 8:30 a.m. to 5:00 p.m.

Type of Meeting: Closed.

Place: Room 675, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Contact: Dr. Rajinder Khosla, Program Director, Electronics, Photonics and Devices Technologies, Division of Electrical and Communications Systems, Room 675, 703/306–1339.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate ECS CAREER proposals submitted to the Division 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 USC 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: October 20, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–28532 Filed 10–23–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Materials Research; 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 Materials Research (1203).

Dates & Times: November 9, 1998; 3:00 p.m.–7:30 p.m.; November 10, 1998; 8:00 a.m.–4:00 p.m.

Place: University of Maryland, College Park, MD.

Type of Meeting: Closed.

Contact Person: Dr. Ulrich Strom, Program Director, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1832.

Purpose of Meeting: To provide advice and recommendations concerning progress of an NSF funded project.

Agenda: To review and evaluate progress of Materials Research Science and Engineering Center.

Reason for Closing: The project being reviewed involves information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the project. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 20, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–28529 Filed 10–23–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Mathematical and Physical Sciences; 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: Advisory Committee for Mathematical and Physical Sciences (66).

Date and Time: November 12, 1998—8:00 AM–5:15 PM; November 13, 1998—8:00 AM–3:00 PM.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 1235, Arlington, VA 22230.

Type of Meeting: Open

Contact Person: Adriaan De Graaf, Executive Officer, MPS, Room 1005, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1800.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations on development of MPS strategic planning mechanisms; provide advice on the appropriateness of current disciplinary boundaries; evaluate the current MPS interfaces with academia and industry; and advise on methods of achieving overall program excellence in MPS.

November 12, 1998

Agenda:

AM—Introductory Remarks, MPS Science Themes

PM—Report on Existing and Future Facilities, MPS Education Themes

November 13, 1998

AM—Continued Discussion on MPS Education Themes, Government-University Partnerships for Advanced Computing

PM—Meeting Wrap-up/Future Business

Dated: October 20, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–28530 Filed 10–23–98; 8:45 am]

BILLING CODE 7550–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Research, Evaluation and Communication; 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 Research, Evaluation and Communication (#1210)

Date and Time: November 16–17, 1998 and 8:00 a.m.–5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 880, Arlington, VA 22230

Type of Meeting: Closed

Contact Persons: Dr. Eric Hamilton, Program Director, Division of Educational System Reform (ESR), Room 875 and Dr. Bernice T. Anderson, Program Director, Research, Evaluation and Communication (REC), Room 855, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1650 for REC and (703) 306–1694) for ESR.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate formal proposals submitted to Systemic Initiatives Research Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 20, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–28531 Filed 10–23–98; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 55–32442–SP and ASLBP No. 99–753–01–SP]

Atomic Safety and Licensing Board Panel; Shaun P. O'Hern (Denial of Reactor Operator's License); Notice of Hearing

Before Administrative Judges: Peter B. Bloch, Presiding Officer, Dr. Richard F. Cole, Special Assistant.

The request for a hearing filed by Shaun P. O'Hern on September 22, 1998 has been granted. The hearing will be conducted pursuant to 10 CFR Part 2, Subpart L and may be determined entirely based on written presentations. The subject of the hearing is the denial of Mr. O'Hern's application to operate a nuclear reactor. This notice is published pursuant to 10 CFR 2.1205(j).

Rockville, Maryland, October 20, 1998.

Peter B. Bloch,

Administrative Judge, Presiding Officer.

[FR Doc. 98–28585 Filed 10–23–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–244 and 50–410]

Rochester Gas and Electric Corp., Niagara Mohawk Power Co., R.E. Ginna Nuclear Power Plant, Nine Mile Point Nuclear Station, Unit No. 2; Indirect Transfer of Operating License

Notice is hereby given that the United States Nuclear Regulatory Commission (the Commission) is considering the issuance of an Order approving under 10 CFR 50.80 an application regarding an indirect transfer of the operating license for Nine Mile Point Nuclear Station, Unit No. 2 (NMP2), to the extent held by Rochester Gas and Electric Corporation (RG&E), and the operating license for the R. E. Ginna Nuclear Power Plant (Ginna). The indirect transfer would be to a holding company, not yet named, over RG&E in accordance with the ''Amended and Restated Settlement Agreement'' before the Public Service Commission of the State of New York dated October 23, 1997. RG&E is licensed by the Commission to own and possess a 14% interest in NMP2 and to wholly own and operate Ginna.

By application dated July 30, 1998, as supplemented August 18, 1998, and September 14, 1998, Paul C. Wilkens, Senior Vice President—Generation, of RG&E, informed the Commission that, subject to shareholder and regulatory approvals, RG&E is planning to implement corporate restructuring whereby RG&E would become a wholly owned subsidiary of a newly formed holding company. The common stock of RG&E would be exchanged on a share-for-share basis for common stock of the holding company such that the holding company would own all the outstanding common stock of RG&E. The holding company, and not RG&E, would be the owner of any non-utility subsidiaries engaged in unregulated business activities. RG&E would remain as an owner and licensee for possession of NMP2 and as the owner and operating licensee of Ginna. The transaction would not involve any change in either the management organization or technical personnel of Niagara Mohawk Power Corporation, which is responsible for operating and maintaining NMP2, or involve any change in RG&E's nuclear management or technical qualifications. Under this restructuring, RG&E would continue to be an ''electric utility'' as defined in 10 CFR 50.2 engaged in the transmission, distribution and the generation of electricity. No direct transfer of the operating licenses or ownership interests in NMP2 and Ginna will result from the proposed restructuring. The transaction would have no effect upon the financing of the RG&E nuclear facilities.

Pursuant to 10 CFR 50.80, the Commission may approve the transfer of the control of a license, after notice to interested persons. Such approval is contingent upon the Commission's determination that the holder of the license following the transfer is qualified to hold the license and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders of the Commission.

For further details with respect to this proposed action, see the RG&E application dated July 30, 1998, as supplemented August 18, 1998 and September 14, 1998. These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and the local public document rooms located at the Penfield Library, State University of New York, Oswego, New York 13126 and at the Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Dated at Rockville, Maryland, this 16th day of October 1998.

Guy S. Vissing,

Senior Project Manager, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–28581 Filed 10–23–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–32176 License No. 15–27070–01 EA 98–124]

In the Matter of The Terracon Companies, Inc. Lenexa, Kansas; Order Imposing Civil Monetary Penalty

I

The Terracon Companies, Inc. (Terracon or the Licensee), is the holder of Materials License No. 15–27070–01, Amendment 7, issued by the Nuclear Regulatory Commission (NRC or Commission) on April 21, 1997. The license authorizes the Licensee to possess and utilize moisture/density gauges containing sealed sources in accordance with the conditions specified therein.

II

An inspection of the Licensee's activities was completed on February 26, 1998. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated May 15, 1998. The Notice stated the nature of the violation, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violation.

The Licensee responded to the Notice in an Answer to Notice of Violation and a Reply to Notice of Violation, both dated June 9, 1998. The Licensee states that the actions of the technician who caused the violation constituted ''careless disregard of security protocols by a properly trained individual who knowingly violated Terracon policies and NRC regulations,'' that Terracon had done all that was required by its license, and that the NRC's enforcement action should have been focused on the technician, not Terracon. Terracon also challenges the rationale for the proposed civil penalty as contradictory, in that the NRC gave Terracon credit for its corrective actions in assessing the civil penalty, but cited the need to prevent similar events from occurring.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violation occurred as stated and that the penalty proposed for the violation designated in the Notice should be imposed by Order.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It is hereby ordered that:*

The Licensee pay a civil penalty in the amount of $2,750 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738.

V

The Licensee may request a hearing within 30 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. A request for a hearing should be clearly marked as a ''Request for an Enforcement Hearing'' and shall be addressed to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Deputy Assistant General Counsel for Enforcement at the same address, and to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order (or if written approval of an extension of time in which to request a hearing has not been granted), the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issue to be considered at such hearing shall be:

Whether, on the basis of the violation admitted by the Licensee, this Order should be sustained.

Dated at Rockville, Maryland, this 19th day of October 1998.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

Attachment—Appendix

Appendix—Evaluation and Conclusion

On May 15, 1998, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for a violation identified during an NRC inspection. The Terracon Companies, Inc. (Terracon or the Licensee) responded to the Notice by an Answer to Notice of Violation and a reply to Notice of Violation, both dated June 9, 1998. In its responses, the Licensee admitted the violation, but protested the proposed civil penalty. The NRC's evaluation and conclusion regarding the Licensee's response are as follows:

Restatement of Violation

10 CFR 20.1802 states, in part, that the licensee shall control and maintain constant surveillance of licensed material that is in an unrestricted area and that is not in storage. As defined in 10 CFR 20.1003, unrestricted area means an area to which access is neither limited nor controlled by the licensee.

Contrary to the above, on January 23, 1998, the licensee did not control and maintain constant surveillance of licensed material in an unrestricted area. Specifically, the licensee did not maintain adequate control or constant surveillance of a CPN Model MC1–DR portable nuclear moisture/density gauge containing a nominal 8-millicurie cesium-137 sealed source and a nominal 40-millicurie americium-241 sealed source. The licensee failed to secure a padlock on the gauge container, resulting in the theft of the gauge from a vehicle parked at a restaurant. (01013)

Summary of Licensee's Request for Mitigation

Terracon states that the actions of the technician who caused the violation constituted ''careless disregard of security protocols by a properly trained individual who knowingly violated Terracon policies

and NRC regulations,'' that Terracon had done all that was required by its license, and that NRC's enforcement action should have been focused on the technician, not Terracon.

Terracon also challenges the rationale for the proposed penalty as contradictory, in that the NRC gave Terracon credit for its corrective actions in assessing the civil penalty, but cited the need to prevent similar events from occurring as one of the reasons for the penalty.

NRC Evaluation of Licensee's Request for Mitigation

First, the technician informed the NRC inspector during the inspection that he had placed a nuclear moisture/density gauge in its case, had chained and locked the gauge case to the bed of the truck, and had placed a padlock in the hasp of the gauge case, but inadvertently had failed to secure the padlock. The inspection's findings are reflected in the NRC's May 15, 1998 Notice. The NRC did not conduct an investigation to determine whether the technician willfully violated NRC requirements. Had the NRC conducted an investigation and concluded that the technician willfully failed to secure the moisture/density gauge from unauthorized removal, the enforcement sanction against Terracon could have been more significant. Regardless of the cause of the technician's action (i.e., inadvertent error or willful act), a failure to secure NRC-licensed material in a public area is of significant concern to the NRC because of the potential for radiation exposures to members of the public.

Second, as Terracon notes, the ''General Statement of Policy and Procedure for NRC Enforcement Action'', NUREG–1600 (Enforcement Policy), provides at Section VIII that enforcement actions may be taken against individuals when their conduct is willful and when they fail to take required actions which have actual or potential safety significance. However, the Enforcement Policy also provides that ''[M]ost transgressions of individuals at the level of Severity Level III or IV violations will be handled by citing only the facility licensee. More serious violations, including those involving the integrity of an individual (e.g., lying to the NRC) concerning matters within the scope of the individual's responsibilities, will be considered for enforcement action against the individual as well as against the facility licensee.'' Terracon's suggestion that the technician, and not Terracon, should not be held responsible for the Severity Level III violation, especially when the integrity of the technician was not involved, is contrary to the Enforcement Policy.

Third, notwithstanding the issue of willfulness, the Licensee is responsible for violations caused by its employees, whether arising from inadvertent error or willful acts. The Commission has formally resolved the issue of a licensee's responsibility for violations caused by licensee employees. In Atlantic Research Corporation, CLI–80–7, 11 NRC 413 (March 14, 1980), the Commission held that ''a division of responsibility between a licensee and its employees has no place in the NRC regulatory regime which is designed to implement our obligation to provide adequate protection to the health and safety of the public in the commercial nuclear field'' and that the licensee is ''accountable for all violations committed by its employees in the conduct of licensed activities.'' Id. at 418. The licensee uses, and is responsible for the possession of, licensed material. The licensee hires, trains, and supervises its employees. All licensed activities are carried out by employees of the licensee and, therefore, all violations are caused by employees of the licensee. A licensee enjoys the benefits of good employee performance and suffers the consequences of poor employee performance. To not hold the licensee responsible for the actions of its employees, whether such actions result from incompetence, negligence, or willfulness, is tantamount to not holding the licensee responsible for its use and possession of licensed material. If the NRC were to adopt such a regime, there would be no incentive for licensees to assure compliance with NRC requirements.

Finally, the NRC finds no contradiction between giving Terracon credit for its corrective actions and citing the need to prevent recurrence of the violation as a reason to propose a civil penalty. In the civil penalty assessment process, the NRC routinely considers whether the licensee should be given credit for identification of the violation [1] and for corrective actions, in determining whether a civil penalty should be assessed and, if so, the size of the penalty. See Enforcement Policy, Section VI.B.2. Because the violation in this case was self-disclosing, (e.g., the violation was apparent as a result of the theft of the gauge), credit for identification was not warranted. Id. at Section VI.B.2.b. The Licensee was, however, given credit for its corrective actions. Consideration of the identification and corrective action factors yielded a civil penalty of 100% of the base penalty for this Severity Level III violation. The NRC staff found no reason to exercise its discretion to either mitigate or escalate the civil penalty yielded by standard application of the identification and corrective action factors. Nor has the Licensee presented any reason to mitigate the penalty. Once it had been determined that a civil penalty was warranted, there was nothing contradictory about noting that a civil penalty would serve the purpose of preventing similar incidents from occurring. The Enforcement Policy specifies that one of the purposes of civil penalties is to deter future violations. Id. at Section V.B. In short, the NRC followed the assessment process of the Enforcement Policy in determining the civil penalty proposed in the Notice.

NRC Conclusion

The NRC concludes that Terracon is responsible for the violation caused by its technician, and that the proposed civil penalty was properly assessed in accordance with the NRC's Enforcement Policy. The Licensee has not presented a basis for withdrawal of the violation nor for mitigation of the civil penalty. Consequently, the proposed civil penalty in the amount of $2,750 should be imposed by Order.

[FR Doc. 98–28583 Filed 10–23–98; 8:45 am]

BILLING CODE 7590–01–P

[1] The identification factor is considered if a licensee has been the subject of enforcement action for Severity Level III violations within in the past two years or previous two inspections. See Enforcement Policy, Section VI.B.2. Since Terracon had previously been the subject of enforcement action in 1997 for a Severity Level III violation (EA 97–425), the identification factor was considered in this case.

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–410 AND 50–244]

Rochester Gas and Electric Corp.; Niagara Mohawk Power Corp.; Nine Mile Point Nuclear Station, Unit 2; R. E. Ginna Nuclear Power Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an Order approving, under 10 CFR 50.80, an application regarding a transfer of control of the operating license for R. E. Ginna Nuclear Power Plant (Ginna) and the operating license for the Nine Mile Point Nuclear Station, Unit No. 2 (NMP2) to the extent held by Rochester Gas and Electric Corporation (RG&E or Applicant). The transfer would be to a holding company, not yet named, to be created over Applicant in accordance with the ''Amended and Restated Settlement Agreement'' before the Public Service Commission of the State of New York dated October 23, 1997 (Case 96–E–0989) (see Exhibit A in the application dated July 30, 1998). Applicant is licensed by the Commission to own and possess a 14-percent interest in NMP2, located in the town of Scriba, Oswego County, New York, and to wholly own, maintain and operate the R. E. Ginna Nuclear Power Plant located in Wayne County, New York.

Environmental Assessment

Identification of the Proposed Action

The proposed action would consent to the transfer of control of the licenses to the extent effected by Applicant becoming a subsidiary of the newly formed holding company in connection with a proposed plan of restructuring. Under the restructuring plan, the outstanding shares of Applicant's common stock are to be exchanged on a share-for-share basis for common stock of the holding company, such that the holding company will own all of the outstanding common stock of Applicant. The holding company, and not RG&E, would be the owner of any

unregulated non-utility subsidiaries. Applicant will continue to be an ''electric utility'' as defined in 10 CFR 50.2 engaged in the transmission, distribution, and generation of electricity. Applicant would retain its ownership interest in NMP2 and Ginna, continue to operate Ginna, and continue to be a licensee of NMP2 and Ginna. No direct transfer of the operating licenses or ownership interests in the stations will result from the proposed restructuring. The transaction would not involve any change to either the management organization or technical personnel of Niagara Mohawk Power Corporation (NMPC), which is responsible for operating and maintaining NMP2 and is not involved in the restructuring of Applicant, and would not involve any change in the nuclear management or technical qualification of RG&E. Also, the transaction would have no effect upon the financing of the RG&E nuclear plants. The proposed action is in accordance with Applicant's application dated July 30, 1998, as supplemented August 18, 1998, and September 14, 1998.

The Need for the Proposed Action

The proposed action is required to enable Applicant to restructure as described above.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed corporate restructuring and concludes that it is an administrative action having no effect upon the operation of either plant. There will be no physical changes to NMP2 or Ginna. The corporate restructuring will not affect the qualifications or organizational affiliation of the personnel who operate and maintain NMP2 and Ginna, as NMPC will continue to be responsible for the maintenance and operation of NMP2 and is not involved in the restructuring of RG&E, and RG&E will continue to be responsible for the maintenance and operation of Ginna.

The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in occupational or offsite radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the restructuring would not affect nonradiological plant effluents and would have no other nonradiological environmental impact.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there are no significant environmental impacts that would result from the proposed action, any alternatives with equal or greater environmental impact need not be evaluated.

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statements Related to the Operation of Nine Mile Point Nuclear Station, Unit No. 2, (NUREG–1085) dated May 1985, and in the Final Environmental Statements Related to the Operations of the R.E. Ginna Nuclear Power Plant, dated December 1973.

Agencies and Persons Contacted

In accordance with its stated policy, on August 31, 1998, the staff consulted with the New York State official, Mr. Jack Spath, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see Applicants' application dated July 30, 1998, as supplemented August 18, 1998, and September 14, 1998, which are 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 Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126, and the Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Dated at Rockville, MD, this 16th day of October 1998.

For the Nuclear Regulatory Commission.

S. Singh Bajwa,

Director, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–28582 Filed 10–23–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–498 and 50–499]

South Texas Project, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U. S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License Nos. NPF–76 and NPF–80 for the South Texas Project, Units 1 and 2 (STP) issued to the STP Nuclear Operating Company (the licensee).

Environmental Assessment

Identification of Proposed Action

The proposed action is in response to the licensee's application dated June 17, 1998, for exemption from the requirements of 10 CFR 50.71(e)(4) regarding submission of revisions to the Updated Final Safety Analysis Report (UFSAR). Under the proposed exemption the licensee would submit revisions to the UFSAR to the NRC no later than 24 calendar months from the previous revision. In addition, pursuant to 10 CFR 50.54(a)(3) and 10 CFR 50.59(b)(2), revisions to the Operations Quality Assurance Plan (OQAP) and the safety evaluation summary reports for facility changes made under 10 CFR 50.59 for STP, respectively, may be submitted on the same schedule as the UFSAR revisions.

The Need for the Proposed Action

10 CFR 50.71(e)(4) requires licensees to submit updates to their UFSAR annually or within 6 months after each refueling outage providing that the interval between successive updates does not exceed 24 months. Since Units 1 and 2 of STP share a common UFSAR, the licensee must update the same document annually or within 6 months after a refueling outage for either unit. The underlying purpose of the rule was to relieve licensees of the burden of filing annual FSAR revisions while assuring that such revisions are made at least every 24 months. The Commission reduced the burden, in part, by

permitting a licensee to submit its FSAR revisions 6 months after refueling outages for its facility, but did not provide for multiple unit facilities sharing a common FSAR in the rule. Rather, the Commission stated that ''With respect to the concern about multiple facilities sharing a common FSAR, licensees will have maximum flexibility for scheduling updates on a case-by-case basis,'' 57 FR 39355 (1992). Allowing the exemption would maintain the UFSAR current within 24 months of the last revision. Submission of the 10 CFR 50.59 design change report for either unit together with the UFSAR revision, as permitted by 10 CFR 50.59(b)(2), also would not exceed a 24-month interval.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed action is administrative in nature, unrelated to plant operations.

The proposed action will not result in an increase in the probability or consequences of accidents or result in a change in occupational exposure or offsite dose. Therefore, there are no radiological impacts associated with the proposed action.

The proposed action will not result in a change in nonradiological plant effluents and will have no other nonradiological environmental impact.

Accordingly, the Commission concludes that there are no environmental impacts associated with this action.

Alternative to the Proposed Action

Since the Commission has concluded that there is no measurable environmental impact associated with the proposed action any alternatives with equal or greater environmental impact need not be evaluated.

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the exemption would result in no change in current environmental impacts. The environmental impacts of the proposed exemption and this alternative are similar.

Alternative Use of Resources

This action did not involve the use of any resources not previously considered in the ''Final Environmental Statement Related to the Operation of South Texas Project, Units 1 and 2,'' dated August 1986, in NUREG–1171.

Agencies and Persons Contacted

In accordance with its stated policy, on September 18, 1998, the staff consulted with the Texas State official regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the licensee's request for the exemption dated June 17, 1998, which is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington DC, 20555 and at the local public document room located at the Wharton County Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488.

Dated at Rockville, Maryland this 15th day of October 1998.

For the Nuclear Regulatory Commission.

John N. Hannon,

Director, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–28584 Filed 10–23–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (MDC Communications Corporation, Class A Subordinate Voting Shares, No Par Value) File No. 1–13718

October 20, 1998.

MDC Communications Corporation (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the American Stock Exchange, Inc. (''Amex'' or ''Exchange'').

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

On September 24, 1998, the Board of Directors of the Company approved a resolution to withdraw the Security from listing on the Amex and to list the Security on the Nasdaq. On October 1, 1998, the Company commenced trading on the Nasdaq. The Company believes that a listing on the Nasdaq will offer the Company greater market visibility in its industry and will provide the Company's shareholders with greater liquidity.

The Company has complied with the rules of the Amex by notifying the Exchange of intention to withdraw its Security from listing on the Exchange by letter dated September 21, 1998. Also enclosed with that letter was a draft copy of the Board resolution approving the delisting. A certified copy of the resolutions was sent to Amex on September 24, 1998.

By letter dated September 25, 1998, the Exchange notified the Company that Amex had no objection to the withdrawal of the Company's Security from listing and registration on the Exchange.

Any interested person may, on or before November 10, 1998, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission or the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–28597 Filed 10–23–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40564; File No. SR–CBOE–98–26]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change to Schedule Quarterly Closing Rotations

October 16, 1998.

I. Introduction

On June 16, 1998, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') submitted to the Securities

and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to provide for a closing rotation in Exchange-traded options on the last trading day of each calendar quarter.

The proposed rule change was published for comment in the **Federal Register** on August 10, 1998.[3] No comments were received on the proposal. This order approves the proposal.

II. Description of the Proposal

The CBOE is proposing to add Interpretation .05 under Rule 6.2 that would provide for a closing rotation to be held in options traded on the CBOE floor on the last trading day of each calendar quarter. Also, the Exchange is setting forth the procedures to be followed in holding these closing rotations. As with other trading rotations that are provided for currently under Rule 6.2, the Order Book Official, with the approval of two Floor Officials, may deviate from these procedures in handling a closing rotation. In addition, the appropriate Floor Procedure Committee may determine not to hold a closing rotation for a particular class of options for a calendar quarter, in which case prior notice will be provided to the Exchange's membership.

The Exchange has noticed recently that on the last trading day of each calendar quarter there is increased order flow in Exchange-traded options and in the underlying securities, particularly at the end of that trading day. Many large money managers adjust their positions at the end of the calendar quarter because of tax considerations and reporting requirements. As a result of this activity in both the underlying and options markets at the end of the calendar quarter, the last sale print for many stocks is often delayed, sometimes well beyond the close on the options market. To account for late prints and increased order flow at the end of the day, the Exchange believes it is important to provide for a closing rotation in Exchange-traded options at the end of each calendar quarter. These rotations will allow Exchange members to adjust the options prices in line with the prices of the underlying securities; to avoid potential capital and/or margin deficiencies for traders with hedged positions involving the options and the underlying securities. The closing rotation will also give investors and other interested parties more accurate closing prices for CBOE options on these high volume days.

Although the Exchange has the authority now under Rule 6.2 to call for closing rotations any time the circumstances warrant, it determined to add this interpretation to the Rule so Floor Officials do not have to make the determination of whether to order a closing rotation each quarter in many different options classes. Also, by adding this Interpretation to its Rules it will give member firms and customers advance notice of the Exchange's intention of holding closing rotations on these four days each year so they can act accordingly.

For quarterly closing rotations, unless otherwise directed by Floor Officials or the appropriate Floor Procedures Committee, the only orders that may participate in the closing rotation are those that are received before the normal close of the trading day, *i.e.*, generally 3:02 p.m. for equity and narrow-based index options and 3:15 p.m. for broad-based index options. The Exchange's Retail Automatic Execution System (''RAES'')[4] will not be available during the closing rotation.

III. Discussion

The Commission finds that the proposed rule change is consistent with Section 6 the Act[5] and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposal is consistent with the Section 6(b)(5)[6] requirements that the rules of an exchange be designed to perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. In addition, the Commission finds that the proposed rule change is consistent with Section 11A of the Act.[7] Specifically, the Commission believes the proposal is consistent with Section 11 A(a)(1)(C)(iii).[8] In that provision, Congress found that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.[9]

The Exchange represents that on the last trading day of each calendar quarter there is increased order flow in Exchange-traded options and in the underlying securities, particularly at the end of that trading day. As a result of this increased volume, the last sale print for many stocks is often delayed. Accordingly, CBOE members must delay the final pricing of their option contracts causing potential capital and/or margin problems for traders with hedged positions involving the options and the underlying securities. The Commission believes that holding a closing rotation on the last day of each calendar quarter may give investors more timely and accurate closing prices for CBOE options on these days. By improving market participants' access to more accurate quotes, the proposal is consistent with Section 11A.

Moreover, the Commission notes that pursuant to Exchange Rule 6.2, the appropriate Floor Procedure Committee, or any two Floor Officials, may direct that one or more trading rotations be held at any time to aid in producing a fair and orderly market.[10] While recognizing that under current Exchange rules trading rotations can be held at any time, the Commission believes that by scheduling these closing rotations in advance, Exchange members may be better prepared to participate in these rotations and this may result in more orderly and efficient markets.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–CBOE–98–26) is approved as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–28595 Filed 10–23–98; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange Act Release No. 40287 (Aug. 3, 1998), 63 FR 42649.

[4] RAES is the Exchange's automatic execution system for small public customer market or marketable limit orders.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78k–1.

[8] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[9] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] *See* CBOE Rule 6.2, *Trading Rotations.*

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40570; File No. SR–NASD–98–76]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Standards for Individual Correspondence

October 19, 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 9, 1998, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly-owned subsidiary NASD Regulation, Inc. (''NASD Regulation''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to change the effective date for its members of SR–NASD–98–29, which amended Rule 2210 of the Conduct Rules of the NASD to require that written or electronic communications prepared for a single customer be subject to the general standards and those specific standards of Rule 2210 that prohibit misleading statements.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

SR–NASD–9–29 and amendments Nos. 1 and 2 thereto, were approved by the SEC on August 26, 1998. In SR–NASD–98–29, the NASD requested that the amendments be made effective within 45 days of Commission approval. Because the NASD believes that members may require more time to adjust their procedures to comply with the amendments, the staff proposes to change the effective date of the amendments for NASD members. Pursuant to this proposed rule change, the NASD will make the amendments effective on November 16, 1998. This effective date will be announced to member firms in a NASD Notice to Members published in October, 1998.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[3] which requires among other things, that the Association adopt and amend its rules to promote just and equitable principles of trade, and generally provide for the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the NASD and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act[4] and subparagraph (e)(1) of Rule 19b–4 thereunder.[5]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing; including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–98–76 and should be submitted by November 16, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

[FR Doc. 98–28596 Filed 10–23–98; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78o–3(b)(6).

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(e)(1).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40565; File No. SR–Phlx–98–30]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto Relating to the Reduction in the Value of the National Over-the-Counter Index

October 16, 1998.

I. Introduction

On July 16, 1998, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section

19(b)(1) of the Securities Exchange Act of 1934 (''Act '')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to reduce the value of its National Over-the-Counter Index (''Index'') option (''XOC'') to one-fourth its present value.

The proposed rule change was published for comment in the **Federal Register** on August 31, 1998.[3] No comments were received on the proposal. On October 7, 1998, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change.[4] This order approves the proposal and grants accelerated approval to Amendment No. 1 thereto. The Commission is also soliciting comments on Amendment No. 1 to the proposed rule change.

II. Description of the Proposal

The Index is a capitalization-weighted market index composed of the 100 largest capitalized stocks traded over-the-counter. The Exchange began trading the XOC in 1985.[5] The Index was created with a value of 150 on its base date of September 28, 1984, which rose to 548 in June 1994, 700 in June 1995 and 868 in September 1995. In December 1995, the Exchange split the Index to one-half its value.[6] According to the Exchange, as of June 10, 1998, the value of the index was 869.22. As a result of the increase in value of the Index, the premium for the XOC options has also risen.

In response to these increases in the value of the Index and the XOC, the Exchange proposes to conduct a ''four-for-one split'' of the Index, such that the value would be reduced to one-quarter to its present value. In order to account for the split, the number of XOC contracts will be quadrupled, such that for each XOC contract currently held, the holder will receive four contracts at the reduced value, with a strike price one-quarter of the current strike price. For instance, the holder of an XOC 800 call will receive four XOC 200 calls.

In addition to the strike price being reduced to one-quarter of its current value, the position and exercise limits applicable to the XOC will be temporarily quadrupled, from 25,000 contracts to 100,000 contracts. The position and exercise limits will return to the current level of 25,000 contracts in June 1999, the last outstanding expiration for the existing contracts now trading. The Exchange believes that this procedure is similar to the one employed respecting equity options where the underlying security is subject to a four-for-one split. The other contract specifications for the XOC will remain unchanged and the trading symbol will remain XOC (plus any necessary wrap symbols). The Exchange will list strike prices surrounding the new, lower index value, pursuant to Rule 1101A.[7] Notice of the strike price changes, as well as the effective date and position limit changes will be made by way of an Exchange memorandum to the membership. In addition, Phlx will notify members that their positions will have to be reduced from 100,000 contracts to 25,000 contracts one month prior to the reduction in June 1999.[8]

According to the Exchange, the purpose of the proposal is to attract additional liquidity to the product in those series that public customers are most interested in trading. For example, according to the Phlx, on June 11, 1998, the September 870 calls were quoted at 51–52 while the puts were quoted at 40–41. The Exchange believes that certain investors and traders may be impeded from trading XOC options at these current levels. A four-for-one split would serve to reduce the price of the aforementioned options to approximately 12¾–13 for the calls and 10–10¼ for the puts, thus making them more accessible to the retail investor. The reduced premium value should, in the Phlx's view, encourage additional investor interest.

The Phlx believes the XOC options provide an important opportunity for investors to hedge and speculate upon the market risk associated with the underlying over-the-counter stocks. By reducing the value of the Index, such investors will be able to utilize this trading vehicle, while extending a smaller outlay of capital. The Exchange believes this should attract additional investors, and in turn, create a more attractive and liquid trading environment.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[9] and in particular, the requirements of Section 6(b)(5) of the Act.[10] Specifically, the Commission believes the proposed rule change is consistent with the Section 6(b)(5) requirement to remove impediments to a free and open securities market. By reducing the value of the Index, the Commission believes that a broader range of investors will be provided a means of hedging their exposure to the market risk associated with the underlying over-the-counter stocks. In addition, the reduced value of the Index could attract additional investors, and create a more active and liquid trading market.

The Commission believes that quadrupling the Index's divisor should not have an adverse market impact in XOC options or increase manipulation concerns. The Index will continue to be comprised of the same stocks with the same weightings and will be calculated in the same manner (except for the change in the divisor). Accordingly, the dollar value of the XOC options contracts an investor holds and controls will not change as a result of the reduced value of the index. In addition, the Exchange's surveillance procedures will remain the same.

The Commission also believes that the Phlx's position and exercise limits and strike price adjustments are appropriate and consistent with the Act. In this regard, the Commission notes that the position and exercise limits and strike price adjustments are similar to the approach used to adjust outstanding options on stocks that have undergone stock splits as well as reductions in the value of other indexes.[11] Moreover, the Commission believes that the temporary quadrupling of the position and exercise

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 40355 (August 24, 1998) 63 FR 46270 (August 31, 1998).

[4] Letter from Nandita Yagnik, Attorney, Phlx to Michael Walinskas, Deputy Associate Director, Division of Market Regulation, Commission, dated October 6, 1998 (''Amendment No. 1''). In Amendment No. 1, the Exchange agreed to give additional notice to members of the reversion to original position and exercise limits of 25,000 contracts, one month before the last expiration for existing contracts which at the time of Amendment No. 1 was March 1999. Currently however, the last expiration for existing contracts is June 1999. Accordingly, the Exchange will give the additional notice to members in May 1999. Telephone call between Nandita Yagnik, Attorney, Phlx and Kelly McCormick, Attorney, Division of Market Regulation, Commission, October 16, 1998.

[5] Securities Exchange Act Release No. 22044 (May 17, 1985), 50 FR 21532 (May 24, 1985).

[6] Securities Exchange Act Release No. 36577 (December 12, 1995), 60 FR 65705 (December 20, 1995).

[7] Specifically, because the Index value will be less than 500, the applicable strike price interval will be $5 in the first four months and $25 in the fifth month. Phlx Rule 1101A(a).

[8] *See* Amendment No. 1, supra note 4.

[9] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] *See*, Securities Exchange Act Release No. 38415 (March 18, 1997), 62 FR 14177 (March 25, 1997)(reducing the value of the Super Cap Index); Securities Exchange Act Release No. 36577 (December 12, 1995), 60 FR 65705 (December 20, 1995)(reducing the value of the National Over-the-Counter Index); Securities Exchange Act Release No. 35999 (July 20, 1995), 60 FR 38387 (July 26, 1995)(reducing the value of the Semiconductor Index).

limits are reasonable in light of the fact that the size of the options contracts will be reduced to one-quarter of their present value and as a result the number of outstanding options contracts an investor holds will be quadrupled. The temporary increase of the position and exercise limits, therefore, will ensure that investors will not potentially be in violation of the lower existing position and exercise limits while permitting market participants to maintain, after the split of the XOC, their current level of investment in the options contracts. As noted above, the increased position and exercise limits of 100,000 contracts will revert to their original limit of 25,000 in June 1999, the last outstanding expiration for contracts now trading.

Finally, the Commission notes that the Exchange has agreed able to provide adequate notice to the market. The Exchange shall send prior notice to its membership setting forth the changes in the Index value, position limits, strike prices and effective date. This notice should facilitate the transition and prevent investor confusion. Moreover, the Exchange has agreed to issue a second notice to members one month prior to the June 1999 expiration reminding members that the position and exercise limits will revert to their original levels of 25,000 contracts.[12] The Commission believes that the second notice should provide adequate time for holders of all open positions in XOC options to adjust their holdings accordingly.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after publication in the **Federal Register**. The Commission notes that Amendment No. 1 merely memorializes the notification procedures that the Exchange has agreed to follow for the notification of members. The Commission believes that Amendment No. 1 should ensure that market participants will receive adequate notice prior to the eventual reversion to the original position and exercise limits. Accordingly, the Commission finds that good cause exists, consistent with Section 6(b)(5) of the Act,[13] and Section 19(b) of the Act [14] to accelerate approval of Amendment No. 1 to the proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any 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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–98–30 and should be submitted by November 16, 1998.

V. Conclusion

For the foregoing reasons, the Commission finds that the Exchange's proposal to reduce the value of the Index to one-quarter of its present value is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the amended proposed rule change (SR–Phlx–98–30) is approved.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–28594 Filed 10–23–98; 8:45 am]

BILLING CODE 8010–01–M

[12] Amendment No. 1.

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b).

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3135; Amendment #2]

State of Florida

In accordance with information received from the Federal Emergency Management Agency, the above-numbered Declaration is hereby amended to establish the incident period for this disaster as beginning on September 25, 1998 and continuing through October 7, 1998.

All other information remains the same, i.e., the deadline for filing applications for physical damage is November 27, 1998 and for economic injury the termination date is June 28, 1999.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 16, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–28561 Filed 10–23–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3133; Amendment #3]

State of Louisiana

In accordance with a notice from the Federal Emergency Management Agency dated October 8, 1998, the above-numbered Declaration is hereby amended to include the Parishes of Ascension, Assumption, and St. James, Louisiana as a disaster area due to damages caused by Tropical Storm Frances and Hurricane Georges.

In addition, applications for economic injury loans from small businesses located in the following contiguous parishes may be filed until the specified date at the previously designated location: Iberia, Iberville, and St. Martin. Any parishes contiguous to the above-named primary parishes have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is November 22, 1998 and for economic injury the termination date is June 23, 1999.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 16, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–28562 Filed 10–23–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3139; Amendment #2]

State of Mississippi

In accordance with information received from the Federal Emergency Management Agency, the above-numbered Declaration is hereby amended to include Covington County, Mississippi as a disaster area due to damages caused by Hurricane Georges.

In addition, applications for economic injury loans from small businesses

located in the contiguous counties may be filed until the specified date at the previously designated location. All counties contiguous to the above-named primary county have been previously declared.

This declaration is further amended to establish the incident period as beginning on September 25, 1998 and continuing through October 5, 1998.

All other information remains the same, i.e., the deadline for filing applications for physical damage is November 30, 1998 and for economic injury the termination date is July 1, 1999.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 16, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–28560 Filed 10–23–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3132; Amendment # 1]

State of Texas

In accordance with information received from the Federal Emergency Management Agency, the above-numbered Declaration is hereby amended to include Jefferson County in the State of Texas as a disaster area due to damages caused by severe storms and flooding associated with Tropical Storm Francis.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Orange and Hardin in Texas. All other counties contiguous to the above-named primary county have been either previously declared or are already covered under a separate declaration for the same occurrence.

This declaration is further amended to establish the incident period as beginning on September 9, 1998 and continuing through October 5, 1998.

All other information remains the same, i.e., the deadline for filing applications for physical damage is November 22, 1998 and for economic injury the termination date is June 23, 1999.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 16, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–28563 Filed 10–23–98; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice No. 2908]

Shipping Coordinating Committee Council and Associated Bodies; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 1:30 PM on Wednesday, November 4th, in Room 6319, at U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC 20593–0001. The purpose of the meeting is to finalize preparations for the 81st session of Council, and the 46th session of Technical Cooperation Committee of The International Maritime Organization (IMO) which is scheduled for 16–20 November 1998, at the IMO Headquarters in London. At the meeting, discussions will focus on papers received and draft U.S. positions. Among other things, the items of particular interest are:

a. Reports of the IMO committees.

b. Review of the IMO technical cooperation activities.

c. Relations with the United Nations.

d. Reports for World Maritime University and International Maritime Law Institute.

e. Administrative and financial matters.

Members of the public may attend these meetings up to the scating capacity of the room. Interested persons may seek information by writing: Mr. Gene F. Hammel, U.S. Coast Guard Headquarters (G–CI), 2100 Second Street, SW; Room 2114, Washington, DC, 20593–0001, By calling: (202) 267–2280, or by faxing: (202) 267–4588.

Dated: October 15, 1998.

Susan K. Bennett,

Chairman, Shipping Coordinating Committee.

[FR Doc. 98–28571 Filed 10–23–98; 8:45 am]

BILLING CODE 4710–07–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP); Notice Regarding the 1998 GSP Annual Review and Termination of the IPR Review of Panama

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: This notice announces the petitions that were accepted for the 1998 GSP Annual Review for modifications of GSP product eligibility; lists the schedule for the public hearing on these petitions, for requesting participation in the hearing, and for submitting pre-hearing and post-hearing briefs; and terminates the IPR review of Panama.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW, Room 518, Washington, D.C. 20508. The telephone number is (202) 395–6971.

SUPPLEMENTARY INFORMATION:

I. Panama IPR Review

In 1995, a review of Panama's protection of intellectual property rights was initiated in response to a petition filed by Nintendo. Since that time, Panama has improved its enforcement of intellectual property rights. On April 30, 1998, USTR removed Panama from the Special 301 ''Watch List.'' In light of Panama's improved enforcement efforts, this review is terminated.

II. 1998 GSP Product Review

The GSP program grants duty-free treatment to designated eligible articles that are imported from designated beneficiary developing countries. The GSP program is authorized by Title V the Trade Act of 1974, as amended (''Trade Act'') (19 U.S.C. 2461 *et seq.*), and administered in accordance with GSP regulations (15 CFR Part 2007) which provide for a GSP annual review.

In a notice dated April 16, 1998, USTR initiated the 1998 GSP Annual Review and announced a deadline of June 16, 1998 for the filing of petitions (63 FR 18963). The product petitions that we received requested changes in the eligibility of products by adding or removing products, or the waiver of ''competitive need limitations'' (CNLs) for eligible articles. Authorization for granting CNL waivers is set forth in section 503(d) of the Trade Act (19 U.S.C. 2464(d)).

The GSP Subcommittee on the TPSC has reviewed the 46 product petitions that were received and has decided that 16 of these petitions should be accepted for consideration in the 1998 GSP Annual Review. The annex to this notice sets forth the case number, product identification, the change requested and the petitioner for each product included in the 1998 GSP Annual Review.

III. Opportunities for Public Comment and Inspection of Comments

The GSP Subcommittee of the TPSC invites comments in support of, or in opposition to, any petition which is the subject of this notice. Submissions should comply with 15 CFR Part 2007, including section 2007.0, and 2007.1. All submissions should identify the subject article(s) in terms of the current Harmonized Tariff Schedule of the United States (''HTS'') nomenclature.

Comments should be submitted in fourteen (14) copies, in English, to the Chairman of the GSP Subcommittee of the Trade Policy Staff Committee, 600 17th Street, NW, Room 518, Washington, DC 20508. Information submitted will be subject to public inspection by appointment with the staff of the USTR public reading room, except for information granted ''business confidential'' status pursuant to 15 CFR 2003.6 and other qualifying information submitted in confidence pursuant to 15 CFR 2007.7. If the document contains confidential information, an original and fourteen (14) copies of a nonconfidential version of the submission along with an original and fourteen (14) copies of the confidential version must be submitted. In addition, any document containing confidential information should be clearly marked ''confidential'' at the top and bottom of each page of the document. The version that does not contain confidential information (the public version) should also be clearly marked at the top and bottom of every page (either ''public version'' or ''nonconfidential''). Comments should be submitted no later than 5:00 p.m. on November 30, 1998.

IV. Notice of Public Hearings

Hearings will be held on December 10 and 11, 1998 beginning at 10:00 a.m. at the U.S. International Trade Commission Building, 500 E. Street, SW, Washington, D.C. 20436. The hearings will be open to the public and a transcript of the hearings will be made available for public inspection or can be purchased from the reporting company. No electronic media coverage will be allowed.

All interested parties wishing to present oral testimony at the hearings must submit the name, address, and telephone number of the witnesses representing their organization to the Chairman of the GSP Subcommittee. Such requests to present oral testimony at the public hearing should be accompanied by fourteen (14) copies, in English, of a written brief or statement, and should be received by 5 p.m. on November 30, 1998. Oral testimony before the GSP Subcommittee will be limited to five minute presentations that summarize or supplement information contained in the briefs or statements submitted for the record. Post-hearing and rebuttal briefs or statements should conform to the regulations cited above and be submitted in fourteen (14) copies, in English, no later than 5 p.m. January 6, 1999. Interested persons not wishing to appear at the public hearings may also submit pre-hearing written briefs or statements by 5:00 p.m. on November 30, 1998, and post-hearing and rebuttal written briefs or statements by January 6, 1999. Comments by interested persons on the USITC Report prepared as part of the product review should be submitted in fourteen (14) copies, in English, by 5 p.m. March 22, 1999.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

ANNEX

[The bracketed language in this Annex has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]

Case No.	HTS subheading	Article	Petitioner
Part A. Petitions to remove duty-free status from beneficiary developing countries, other than those designated as least-developed beneficiary developing countries, for a product on the list of eligible articles for Generalized System of Preferences.			
98–1	2934.20.05 ..	Nucleic acids and their salts; other heterocyclic compounds: Compounds containing a benzothiazole ring-system (whether or not hydrogenated), not further fused: N-tert-Butyl-2-benzothiazolesulfenamide Flexsys America L.P., Nitro, WV..	
Part B. Petitions for waiver of competitive need limit for a product on the list of eligible products for the Generalized System of Preferences.			
98–2	2841.70.10 .. (Chile)	Salts of oxometallic or peroxometallic acids: Molybdates: Of ammonium Unsaturated acrylic monocarboxylic acids, cyclic monocarboxylic acids, their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulfonated, nitrated or nitrosated derivatives: Aromatic monocarboxylic acids, their anhydrides, halides, peroxides, peroxyacids and their derivatives: Benzoic acid, its salts and esters: Benzoic acid and its salts: [p-Sulfobenzoic acid, potassium salt]	Chilean Copper Commission, Chile; Corporacion Nacional del Cobre de Chile, Chile.
98–3	2916.31.15 .. (Estonia)	Other	Velsicol Chemical Corporation, Rosemont, IL.

ANNEX—Continued

[The bracketed language in this Annex has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]

Case No.	HTS subheading	Article	Petitioner
		Plywood, veneered panels and similar laminated wood: Plywood consisting solely of sheets of wood, each ply not exceeding 6 mm in thickness: With at least one outer ply of tropical wood specified in subheading note 1 to chapter 44 of the HTS: Not surface covered, or surface covered with a clear or transparent material which does not obscure the grain, texture or markings of the face ply: [With a face ply of birch (*Betula* spp.); with a face ply of Spanish cedar (*Cedrela* spp.) or walnut (*Juglans* spp.)] Other: [With at least one outer ply of the following tropical woods: Dark Red Meranti, Light Red Meranti, White Lauan, Sipo, Limba, Okoumé, Obeche, Acajou d'Afrique, Sapelli, Virola, Mahogany, Palissandre de Para, Palissandre de Rio or Palissandre de Rose]	
98–4	4412.13.50 .. (Indonesia) ..	Other	Government of Indonesia.
		Plywood, veneered panels and similar laminated wood: Other, with at least one outer ply of nonconiferous wood: With at least one ply of tropical wood specified in subheading note 1 to chapter 44 of the HTS: [Containing at least one layer of particle board] Other: Plywood: Not surface covered, or surface covered with a clear or transparent material which does not obscure the grain, texture or markings of the face ply: [With a face ply of birch (*Betula* spp.)]	
98–5	4412.22.30 .. (Indonesia) ..	Other	Government of Indonesia.
		Articles of jewelry and parts thereof, of precious metal or of metal clad with precious metal: Of precious metal whether or not plated or clad with precious metal: Of silver, whether or not plated or clad with other precious metal: [Rope, curb, cable, chain and similar articles produced in continuous lengths, all the foregoing, whether or not cut to specific lengths and whether or not set with imitation pearls or imitation gemstones, suitable for use in the manufacture of articles provided for in heading 7113] Other: [Valued not over $18 per dozen pieces or parts]	
98–6	..... 7113.11.50 .. (Thailand)	Other	Government of Thailand.
		Of other precious metal, whether or not plated of clad with precious metal: [Rope, curb, cable, chain and similar articles produced in continuous lengths, all the foregoing, whether or not cut to specific lengths and whether or not set with imitation pearls or imitation gemstones, suitable for use in the manufacture of articles provided for in heading 7113]. Other: Necklaces and neck chains, of gold: [rope; mixed link]	
98–7	7113.19.29 .. (India)	Other	Government of India.
		Refined copper and copper alloys, unwrought (other than master alloys of heading 7405): Refined copper: [Cathodes and sections of cathodes; wire bars]	
98–8	7403.13.00 .. (Chile)	Billets	Chilean Copper Commission, Chile; Corporacion Nacional del Cobre de Chile, Chile.
98–9	7403.19.00 .. (Chile)	Other	Do.
		Table, kitchen or other household articles and parts thereof, of copper; pot scourers and scouring or polishing pads, gloves and the like, of copper; sanitary ware and parts thereof, of copper: Table, kitchen or other household articles and parts thereof; pot scourers and scouring or polishing pads, gloves and the like: [Pot scourers and scouring or polishing pads, gloves and the like)	
98–10	7418.19.20 .. (India)	Other: [Coated or plated with precious metals] ..... Other: Of copper-zinc base alloys (brass)	Government of India.

ANNEX—Continued

[The bracketed language in this Annex has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]

Case No.	HTS subheading	Article	Petitioner
98–11	8483.10.30 .. (Brazil)	Transmission shafts (including camshafts and crankshafts) and cranks; bearing housings, housed bearings and plain shaft bearings; gears and gearing; ball or roller screws; gear boxes and other speed changers, including torque converters; flywheels and pulleys, including pulley blocks; clutches and shaft couplings (including universal joints); parts thereof: Transmission shafts (including camshafts and crankshafts) and cranks: Camshafts and crankshafts: [Designed for use solely or principally with spark-ignition internal combustion piston engines or rotary engines] Other. Reception apparatus for radiotelephony, radiotelegraphy or radiobroadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock: [Radiobroadcast receivers capable of operating without an external source of power, including apparatus capable of receiving also radiotelephony or radiotelegraphy; radio- broadcast receivers not capable of operating without an external source of power, of a kind used in motor vehicles, including apparatus capable of receiving also radiotelephony or radiotelegraphy] Other radiobroadcast receivers, including apparatus capable of receiving also radiotelephony or radiotelegraphy: [Combined with sound recording or reproducing apparatus; not combined with sound recording or reproducing apparatus but combined with a clock]	Cummins Engine Company, Columbus, IN.
98–12	8527.39.10 .. (Indonesia) ..	Other ..... Reception apparatus for television, whether or not incorporating radiobroadcast receivers or sound or video recording or reproducing apparatus; video monitors and video projectors: Reception apparatus for television, whether or not incorporating radiobroadcast receivers or sound or video recording or reproducing apparatus: Color: Non-high definition, having a single picture tube intended for direct viewing (non-projection type), with a video display diagonal not exceeding 35.56 com: Incorporating video recording or reproducing apparatus: [With a video display diagonal not exceeding 33.02 cm]	Pioneer Electronics (U.S.A.), Inc., Long Beach, CA; P.T. Dahw Electronic Indonesia, Indonesia.
98–13	8528.12.16 .. (Thailand)	Other	Government of Thailand; Orion Sales, Olney, IL; Thomson Consumer Electronic, Inc, Indianapolis, IN; Thomson Television (Thailand) Co., Ltd., Thailand World Electric (Thailand), Ltd., Thailand.
98–14	8531.20.00 .. (Philippines)	Electric sound or visual signaling apparatus (for example, bells, sirens, indicator panels, burglar or fire alarms), other than those of heading 8512 or 8530; parts thereof: Indicator panels incorporating liquid crystal devices (LCD's) or light emitting diodes (LED's). Parts and accessories of the motor vehicles of headings 8701 to 8705: Brakes and servo-brakes and parts thereof: [Mounted brake Linings] Other: [For tractors suitable for agricultural use]	Government of the Philippines.
98–15	8708.39.50 .. (Brazil)	For other vehicles	Bosch Braking Systems Corporation, Sumter, SC; Robert Bosch Limitada, Brazil.
98–16	9001.30.00 .. (Indonesia) ..	Optical fibers and optical fiber bundles; optical fiber cables other than those of heading 8544; sheets and plates of polarizing material; lenses (including contact Lenses), prisms, mirrors and other optical elements, of any material, unmounted, other than such elements of glass not optically worked: Contact Lenses.	Government of Indonesia.

[FR Doc. 98–28589 Filed 10–23–98; 8:45 am]

BILLING CODE 3901–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Cancellation of Meeting of the Trade and Environment Policy Advisory Committee (TEPAC)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of meeting cancellation.

SUMMARY: A notice was published in the **Federal Register** dated October 16, 1998, Volume number 63, FR DOC. 98–27861, page 55673, announcing a meeting of the Trade and Environment Policy Advisory Committee (TEPAC) scheduled for October 30, 1998 from 1:00 p.m. to 5:00 p.m. The meeting was to be open to the public from 4:30 p.m. to 5:00 p.m. and closed to the public from 1:00 p.m. to 4:30 p.m. However, due to scheduling conflicts the meeting had to be canceled.

FOR FURTHER INFORMATION CONTACT:

Bill Daley, Office of the United States Trade Representative, (202) 395–6120.

Pate Felts,

Assistant U.S. Trade Representative.

[FR Doc. 98–28550 Filed 10–23–98; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc.; Certification Task Force

Cancellation

The October 29–30, RTCA Certification Task Force meeting announced in the **Federal Register**, 63 FR 55423 (Thursday, October 15, 1998), second column, has been canceled. It will be rescheduled to early December. The revised data and location will be announced later.

Persons wishing to obtain further information should contact RTCA at (202) 833–9339 (phone), (202) 833–9434 (fax), or dclarke@rtca.org (e-mail).

Issued in Washington, DC, on October 20, 1998.

Janice L. Peters,

Designated Official.

[FR Doc. 98–28566 Filed 10–23–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Federal Transit Administration

[FHWA Docket No. FHWA–98–4317]

Transportation Equity Act for the 21st Century; Interim Implementation of the Congestion Mitigation and Air Quality Improvement Program

AGENCY: Federal Highway Administration (FHWA), Federal Transit Administration (FTA), DOT.

ACTION: Notice; request for comments.

SUMMARY: This document publishes interim implementation guidance on section 1110 of the Transportation Equity Act for the 21st Century (TEA–21), Pub. L. 105–178, 112 Stat. 107, for the congestion mitigation and air quality improvement program (CMAQ) to offer the opportunity for comment into the development of final guidance on this program. The interim guidance provides informational items on issues related the reauthorized CMAQ program, new provisions regarding eligible geographic areas under TEA–21, and guidance related to projects now eligible for CMAQ funds. With the exception of the issues discussed in this interim guidance, all provisions of the policy guidance issued on March 7, 1996 (61 FR 50890, September 27, 1996) continue to apply. The FHWA and the FTA intend to issue final, comprehensive guidance on the new CMAQ program following opportunity for interested parties to comment. In addition, the FHWA and the FTA will host four forums in the near future to provide an opportunity for those directly involved to assist in developing the final guidance.

DATES: This interim guidance is effective October 26, 1998.

Comments on the development of final guidance must be received on or before Monday, November 30, 1998.

ADDRESSES: Your signed, written comments must refer to the docket number appearing at the top of this document and you must submit the comments to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., e.t., Monday and Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: For the FHWA program office: Mr. Michael J. Savonis, Office of Environment and Planning, (202) 366–2080; For the FTA program office: Mr. Abbe Marner, Office of Planning, (202) 366–4317; For legal issues: Mr. S. Reid Alsop, (202) 366–1371. Office hours are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): http://dms.dot.gov. It is available 24 hours a day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register**'s home page at: http://www.nara.gov/fedreg and the Government Printing Office's database at: http://www.access.gpo.gov/nara.

Background

In addition to the interim guidance which is included in this notice, the FHWA and the FTA would like input on a number of questions and issues related to the new flexibilities in the CMAQ program under TEA–21. Specific questions are listed later in this notice and interested parties are urged to provide written comments. Also, comments on any othe aspect of the CMAQ program are welcomed and will be taken into account in the development of final guidance.

(Authority: 23 U.S.C. 315; sec. 1110, Pub. L. 105–178, 112 Stat. 107 (1998); 49 CFR 1.48 and 1.51)

Issued on: October 7, 1998.

Kenneth R. Wykle,

Gordon J. Linton,

FHWA Administrator.

FTA Administrator.

The text of the interim implementation on the CMAQ program reads as follows:

I. Interim Implementation of the Congestion Mitigation and Air Quality Improvement Program

Information: Interim Implementation of the Congestion Mitigation and Air Quality Improvement (CMAQ) Program.

Associate Administrator for Program Development, FHWA HEP–40/TPL–12 Associate Administrator for Planning, FTA

Regional Federal Transit Administrators

Regional Federal Highway Administrators
Federal Lands Highway Program Administrator

The CMAQ program was reauthorized in the recently enacted Transportation Equity Act for the 21st Century (TEA–21). The primary purpose of the CMAQ program remains the same: to fund projects and programs in nonattainment and maintenance areas which reduce transportation-related emissions. Some changes to the CMAQ program were included in TEA-21 however, and those changes are the subject of this Interim Guidance. The FHWA and FTA intend to issue final, comprehensive guidance on the new CMAQ program by December 1998 and will initiate a process for receiving stakeholder input on that guidance in the near future.

This Interim Guidance provides: (1) Informational items on issues related to the reauthorized CMAQ program, (2) new provisions regarding eligible geographic areas under TEA-21, and (3) guidance related to projects now eligible for CMAQ funds. With the exception of the issues discussed in this Interim Guidance, all provisions of the March 7, 1996, Guidance on the CMAQ program continue to apply.

1. Informational Items

1. a. Authorization Levels and Apportionment Formula

Table 1 shows the CMAQ authorization levels by fiscal year (FY) as included in TEA–21. The CMAQ funds will be apportioned to States each year based upon the adopted apportionment formula as shown in Table 2. Following the apportionments, States are encouraged to suballocate CMAQ funds to the nonattainment and maintenance areas in each State. The States need to be mindful that the highest priority for CMAQ funds continues to be transportation control measures (TCMs) identified in the State implementation plan (SIP).

TABLE 1.—TEA–21 CMAQ AUTHORIZATION LEVELS

Fiscal year authorization	Amount authorized
FY 1998	$1,192,619,000
FY 1999	1,345,415,000
FY 2000	1,358,138,000
FY 2001	1,384,930,000
FY 2002	1,407,474,000
FY 2003	1,433,996,000

TABLE 2.—TEA–21 CMAQ APPORTIONMENT FORMULA

Pollutant	Classification at the time of annual apportionment	Weighting factor
Ozone (O_3) or Carbon Monoxide (CO)	Maintenance	.8
Ozone	Submarginal	.8
	Marginal	1.0
	Moderate	1.1
	Serious	1.2
	Severe	1.3
	Extreme	1.4
Carbon Monoxide	Nonattainment (for CO only)	1.0
Ozone and Carbon Monoxide	Ozone nonattainment or maintenance and CO maintenance	1.1 × O_3 factor
	Ozone nonattainment or maintenance and CO nonattainment	1.2 × O_3 factor
All States—minimum apportionment	½ of 1 percent total annual apportionment of CMAQ funds	N/A

1.b. Minimum Guarantee

The TEA–21 provides a minimum guarantee that requires each State to receive funding in an amount not less than 90.5 percent of the estimated annual Federal gasoline tax payments that State pays into the Highway Trust Fund. Due to the minimum guarantee, the annual authorizations listed in Table 1 are the basic authorization levels and could be increased depending on actual Highway Trust Fund receipts.

1.c. Apportionment Formula

The CMAQ funds are apportioned according to a formula based on air quality need which is calculated in the following manner. The population of each area in a State, that at the time of apportionment is a nonattainment or maintenance area for ozone and/or carbon monoxide (CO), is multiplied by the appropriate factor listed in Table 2. Key changes in the apportionment formula under TEA–21 are noted below.

- Areas that are designated and classified as submarginal and maintenance areas for ozone are now explicitly included in the apportionment formula;
- There are new weighting factors for CO nonattainment areas;
- The upper limit on the amount of CMAQ funds that the largest States (California, New York, and Texas) could receive is now lifted, ensuring that CMAQ apportionments more closely reflect needs based upon nonattainment and maintenance area designations and classifications in each State; and
- The freeze related to the apportionment formula due to language in the National Highway System Designation Act of 1995 has been lifted. This freeze had the effect of apportioning CMAQ funds based on nonattainment status as of 1994, regardless of whether redesignation had occurred. This approach has now been replaced by a formula using current designations and classification at the time of apportionment.

1.d. Minimum Apportionments

Each State is guaranteed at least ½ of 1 percent of each year's CMAQ authorized funding regardless of whether the State has any nonattainment or maintenance areas.

1.d.1. States Without a Nonattainment Area

If a State does not have, *and has never had,* a nonattainment area, the State may use its minimum apportionment for any projects eligible under the STP, in addition to projects eligible under the CMAQ program. As noted in the March 7, 1996, guidance, such States are encouraged to give priority to the use of CMAQ program funds for the development of congestion management systems, public transportation facilities and equipment, and intermodal facilities and systems, as well as the implementation of projects and programs produced by those systems.

1.d.2. States With a Nonattainment Area

Some of the States receiving minimum apportionments have nonattainment or maintenance areas. The population in these areas when weighted by the severity of the pollution is insufficient to bring these States CMAQ funds up to the minimum apportionment levels. Additional flexibility is granted under TEA–21 for these States. Specifically, a State receiving the minimum apportionment may use that portion of the funds not based on its nonattainment and maintenance area population for any project in the State eligible under the Surface Transportation Program (STP). The FHWA will provide a list of these States and a description of the flexibility granted them at a future date.

1.e. Transferability of CMAQ Funds

States may transfer CMAQ funds to other programs according to the following provision. An amount not to exceed 50 percent of the State's annual apportionment may be transferred *less* the amount the State would have received if the CMAQ program was authorized at $1,350,000,000. Any transfer of such funds must still be obligated in nonattainment and maintenance areas. This increment of transferable funds will differ from year-to-year and State-to-State depending on overall authorization levels. Each year the FHWA and the FTA will inform each State how much of their CMAQ funding is transferable, if any.

1.f. Study on the Effectiveness of the CMAQ Program

The TEA–21 directs the Secretary of Transportation and the EPA Administrator to enter into arrangements with the National Academy of Sciences to conduct a study on the effectiveness of the CMAQ program. Among other things, the study will evaluate the emissions reductions attributable to CMAQ funded projects. The results of the study will be provided to Congress not later than January 1, 2001. The study will be funded by deducting $500,000 per year from the total CMAQ apportionments for FY 1999 and FY 2000. More information about the status of this effort will be provided as the details and scope of this study are fully developed.

2. Eligible Geographic Areas

2.a. Maintenance Areas

Maintenance areas that were designated nonattainment, but have since met the air quality standards are now explicitly eligible to receive CMAQ funding. Such areas must have met the classification requirements of the 1990 Clean Air Act Amendments when designated nonattainment (see 2.c. below) in order to be eligible.

If a State has ozone or CO maintenance areas only, the State must now exclusively use its CMAQ funding in those areas contained within its borders. Previous guidance allowed such States flexibility to use their CMAQ funding for projects eligible under the STP if a State could demonstrate that it had sufficient funding to meet its air quality commitments within a maintenance area. Such flexibility is no longer allowed since maintenance areas are now included in the apportionment formula and the eligibility provisions require that CMAQ funding be used in nonattainment and maintenance areas.

2.b. Particulate Matter (PM–10) Nonattainment and Maintenance Areas

Nonattainment and maintenance areas for PM–10 are also now explicitly eligible to receive CMAQ funding. Under the previous guidance, CMAQ funding had been extended to such areas under administrative discretion provided that two requirements were met. First, the EPA had to attest that progress toward attainment of the ozone and/or CO standards would not be delayed by funding PM–10 mitigation projects under the CMAQ program. And second, the State had to notify all nonattainment and maintenance areas that PM–10 projects were to be funded. Now that the law explicitly recognizes these areas as eligible, such requirements are lifted.

States that have PM–10 nonattainment or maintenance areas only (i.e., no ozone or CO nonattainment or maintenance areas) are granted additional flexibility under TEA–21. Since these areas are not included in the CMAQ apportionment calculation, the State may use its minimum apportionment for projects eligible under the STP or the CMAQ program anywhere in the State. However, such States are encouraged to use their CMAQ funds in the PM–10 nonattainment and maintenance areas.

2.c. Classification Criteria

An area that is designated as a nonattainment area for ozone, CO or PM–10 under the Clean Air Act prior to December 31, 1997, is eligible for CMAQ funds provided that the area is also classified in accordance with sections 181(a), 186(a), or 188(a) or (b) of the Clean Air Act. This means that ozone nonattainment areas must be classified ''marginal'' through ''extreme,'' and CO and PM–10 nonattainment areas must be classified either ''moderate'' or ''serious'' to be eligible for CMAQ funding. Submarginal ozone nonattainment areas are now included in the CMAQ apportionment formula, but are not mentioned in the eligibility criteria of TEA–21. To resolve this apparent oversight, we are extending CMAQ eligibility to submarginal ozone nonattainment areas. Areas that were designated with these classifications and subsequently redesignated to maintenance areas are also eligible.

2.d. Revised National Ambient Air Quality Standards (NAAQS)

The CMAQ eligibility provisions under TEA–21 allow that any area designated as nonattainment after December 31, 1997, be eligible for CMAQ funding even though it may not be classified in accordance with the sections of the Clean Air Act cited above (see section 2.c.). This provision ensures that any areas designated nonattainment as a result of the revised ozone and PM air quality standards, promulgated in 1997, will be eligible for CMAQ funding. Such areas, however, will not be included in the apportionment formula since they will not be given classifications identified in the Clean Air Act Amendments of 1990 (sections 181(a), 186(a), or 188(a) and (b)). Such areas that are subsequently redesignated to maintenance areas are also eligible.

2.e. Revocation of the 1-Hour Ozone Standard

As part of the transition to the 8-hour ozone standard, EPA recently revoked the 1-hour standard in areas that had the requisite 3 years of ''clean'' monitoring data. The list of areas for which the 1-hour standard has been revoked is found in the June 5, 1998, **Federal Register**. Among this group, those areas that had *approved* maintenance plans by the effective date of the revocation June 5, 1998 will continue to have their

maintenance plans in full force. As maintenance areas, they will continue to be eligible for CMAQ funds and will be included in the annual apportionment formula. The conformity requirements will also continue to apply in these areas.

Other areas among the group for which the 1-hour ozone standard has been revoked do not have approved maintenance plans. They may not have submitted a maintenance plan or the plan may not have been approved by June 5. These areas, then, are no longer designated nonattainment or maintenance relative to the 1-hour standard. As such, these areas will not be subject to the conformity requirements and they will no longer be able to meet the basic statutory requirement for CMAQ eligibility unless they are designated nonattainment or maintenance for CO and/or PM. In order to provide continuity in the transportation/air quality planning process, the FHWA and the FTA are establishing an interim period for these areas providing some continued eligibility under the CMAQ program. Air quality improvement projects in the first 3 years of the Transportation Improvement Program (TIP) will remain eligible for CMAQ funding, subject to the usual State and local direction regarding project selection. The metropolitan planning organizations (MPOs) in these areas will have 4 months from the date of this guidance to amend their TIPs in response to this guidance. After this time frame, CMAQ funding will be restricted to only CMAQ-eligible projects in the first 3 years of the TIP.

At the time of issuance of this interim guidance, EPA's policies regarding the revocation of the PM–10 standard were still under development. Issues affecting the distribution of CMAQ and eligibility under the program for areas affected by the revocation of the PM–10 standard will be addressed in the final program guidance.

3. Newly Eligible Projects

3.a. Extreme Low-Temperature Cold Start Programs

Projects intended to reduce emissions from extreme cold-start conditions are now eligible for CMAQ funding. This TCM is listed in Clean Air Act Section 108(f)(A)(1) and was heretofore excluded from eligibility for CMAQ funding. Examples of such projects include:

- Retrofitting vehicles and fleets with water and oil heaters; and
- Installing electrical outlets and equipment in publicly-owned garages or fleet storage facilities.

3.b. Magnetic Levitation Transportation Technology Deployment Programs

The CMAQ funds may be used to fund a portion of the full project costs (including planning, engineering, and construction) pursuant to Section 1218-Magnetic Levitation Transportation Technology Deployment Program of TEA–21. For these projects, the Federal share may be up to 100 percent of the eligible costs.

3.c. Public Private Partnerships

The TEA–21 provides greater access to CMAQ funds for projects which are cooperatively implemented by the public and private sectors and/or non-profit entities. Public/private initiatives are addressed in the existing CMAQ guidance (see section II.A.13); however, the new statutory language leads to several important changes regarding the eligibility of joint public/private initiatives.

Proposed programs or projects no longer are required to be under the primary control of the cooperating public agency. Also, two of the three criteria which helped to define eligibility for joint public/private ventures in the March 1996 CMAQ guidance will no longer apply since the restrictions are not supported by the new statutory language. These criteria were: That the activity normally be a public sector responsibility, and that private ownership be shown to be cost-effective. The third criterion, noting the public agency's responsibility to oversee and protect the investment of Federal funds in a public/private partnership, continues to apply.

Eligible activities under the public/private partnership provisions include:

- Ownership or operation of land, facilities or other physical assets;
- Cost-sharing of project expenses;
- Carrying out administration, construction management or operational duties associated with a project; and
- Any other form of participation approved by the U.S. DOT Secretary.

While the new statute provides greater latitude in funding projects initiated by private or non-profit entities, it also raises concerns about the use of public funds to benefit a specific private entity. Since the public benefit is in air quality improvement, it is expected that future funding proposals involving private entities will demonstrate strong emission reduction benefits. Furthermore, this new flexibility requires that greater emphasis be placed on an open, participatory process leading up to the selection of projects for funding. Because of concerns about the equitable use of public funds, the FHWA and the FTA consider it essential that all interested parties have full and timely access in the process of selecting projects for CMAQ funding. This could involve open solicitation for project proposals; objective criteria developed for rating candidate projects; and announcement of selected projects.

Until more comprehensive guidance is issued, all requests for CMAQ funding involving public/private initiatives must be forwarded by the FHWA and the FTA field offices to Headquarters for review and prior concurrence prior to project approval.

Eligible costs under this section may not include costs to fund an obligation imposed on private sector or non-profit entities under the Clean Air Act or any other Federal law. For example, CMAQ funds may not be used to fund mandatory control measures such as Stage II Vapor Recovery requirements placed on fuel sellers.

The TEA–21 contained special provisions for alternative fuel projects that are part of a public/private partnership. For purchase of *privately-owned vehicles or fleets using alternative fuels,* activities eligible for CMAQ funding is limited to the incremental cost of an alternative fueled vehicle compared to a conventionally fueled vehicle. Further, if other governmental funds are used for vehicle purchase in addition to CMAQ funds, such governmental funds must be applied to the incremental cost before CMAQ funds are applied. For *transit vehicles and other publicly-owned vehicles or fleets,* the provisions of the March 7, 1996, Guidance continue to apply. Fleet conversions no longer need to be specifically identified or included in the SIP or maintenance plan in order to be eligible for CMAQ funding. It is recommended however, that consideration of such projects be coordinated with air quality agencies prior to selection for funding under the CMAQ program. This coordination will ensure that such projects are consistent with SIP strategies to attain the NAAQS or in maintenance plans to ensure continued maintenance of the NAAQS.

Decisions over which projects and programs to fund under CMAQ should continue to be made through a cooperative process involving the State departments of transportation, affected MPOs, and State and local air quality agencies. All projects funded with CMAQ funds must be included in conforming transportation plans and TIPs in accordance with the

metropolitan planning regulations of October 28, 1993 (23 CFR 450.300) and the transportation conformity requirements (40 CFR parts 51 and 93, August 15, 1997).

4. Other Provisions—Federal Share Increase for Transit Vehicle Control Systems

The TEA–21 amends 23 U.S. C. 120 (c) to allow an increased Federal share for transit vehicle priority control systems. Section 120 of Title 23 (see Attachment 3) is amended to provide that the Federal share of funding for priority control systems for transit vehicles may be up to 100 percent.

II. Questions and Issues on Which the FHWA and the FTA Seek Input

The FHWA and the FTA would like comments on the following questions from interested parties, as well as suggestions on how these issues might be addressed in final CMAQ guidance:

1. Public-Private Partnerships: TEA–21 provides greater access to CMAQ funds for projects which are cooperatively implemented by the public and private sectors and/or non-profit entities. The new statute now allows private and non-profit entities to own and operate land, vehicles, and facilities with CMAQ program funds. Three key changes to eligibility follow: (1) Proposed programs or projects no longer are required to be under the primary control of the cooperating public agency; (2) the activity to be funded no longer is required to be normally a public-sector responsibility; and (3) it is no longer necessary to demonstrate that private ownership of a CMAQ-funded project is cost-effective. Below are key questions raised by this new, broad flexibility now available to fund public-private initiatives.

1.a. Concerns arise about unfair competitive advantage when public funds will be used for a project owned and/or operated by a private entity. Are there ways to ensure that the public funding (CMAQ) is limited to the production of a public benefit—air quality improvement?

1.b. In implementing this provision, the FHWA and the FTA believe it is important to maintain an open and participatory process in the selection of projects or activities to receive CMAQ funding. How can the Federal, State, and local agencies insure that an open process for project selection is preserved?

1.c. What safeguards, agreements or other mechanisms should be employed to protect the public investment and insure that joint public/private projects funded under the CMAQ program are used for their intended public purpose, which is to improve air quality?

1.d What are the implications of these new flexibilities on the transportation/air quality planning process? For transportation conformity?

2. Telecommuting: Currently, eligibility for expenses related to telecommuting programs is limited to planning, technical and feasibility studies, training, coordination and promotion. Purchase of computer and office equipment for public agencies and related activities are not eligible. Should CMAQ eligibility be expanded to include these costs?

3. Alternative Fuel Vehicles: Under the interim guidance and under TEA–21, CMAQ eligibility under the public-private partnership provisions is limited to the incremental cost of a new alternative fuel vehicles as compared to a conventionally fueled vehicle of the same type. Should this policy be extended to projects that will provide for the use of alternative fuels for publicly owned vehicles and vehicle fleets (other than vehicles used for public transit services)?

4. Traffic Calming Measures: While traffic calming is generally considered to have positive environmental impacts, when viewed in the context of the speed-emissions profiles inherent in the MOBILE 5a model, traffic calming measures appear to increase hydrocarbon and CO emissions by lowering speeds. Should traffic calming projects be categorically excluded from CMAQ funding or should they be considered for eligibility on a case-by-case basis?

5. Experimental Pilot Projects: A July 1995 revision to the CMAQ Guidance created the flexibility to fund ''experimental pilot'' projects. The types of projects were not specified. The hope was to encourage innovative activities that held promise for reducing emissions. To date, this provision has been little used. What can the FHWA and the FTA do to encourage the implementation of experimental projects under this provision?

6. Fare/Fee Subsidy Program: The current CMAQ Guidance allows for partial, short-term subsidies of transit/paratransit fares as a means of encouraging transit use. Transit agencies have used this provision to offer reduced fares on ''ozone alert'' days. Should this provision be changed to allow ''free fares''? Should the provision be loosened to allow a broader period of coverage, i.e., throughout the high-ozone season rather that individual episodes?

7. High Occupancy Toll (HOT) Lanes: A congestion pricing strategy that allows limited use of High Occupancy Vehicle (HOV) lanes by single occupant vehicles is known as a HOT lane. Should projects to fund the development and/or operation of HOT lanes be eligible under the CMAQ program?

8. Reporting Requirements: The reporting requirements under ISTEA have enabled the FHWA and the FTA to collect valuable information about the uses of CMAQ funds and benefits of CMAQ-funded projects. Do you have any suggestions on how to improve upon the quality of data and information provided in annual reports? Would you use an electronic reporting format if that option were available to you? Do you have any suggestions on how to improve the reporting requirements and minimize the administrative burden of reporting on CMAQ-funded projects?

[FR Doc. 98–28475 Filed 10–23–98; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–4548]

Notice of Receipt of Petition for Decision That Nonconforming 1989–1991 Volkswagen Golf 4-Door Sedans Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1989–1991 Volkswagen Golf 4-Door Sedans are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1989–1991 Volkswagen Golf 4-Door Sedans that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is November 25, 1998.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400

Seventh St., SW, Washington, DC 20590. [Docket hours are from 10 am to 5 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

G&K Automotive Conversion, Inc. of Santa Ana, California (''G&K'') (Registered Importer 90–007) has petitioned NHTSA to decide whether 1989–1991 Volkswagen Golf 4-Door Sedans are eligible for importation into the United States. The vehicles which G&K believes are substantially similar are 1989–1991 Volkswagen Golf 4-Door Sedans that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1989–1991 Volkswagen Golf 4-Door Sedans to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

G&K submitted information with its petition intended to demonstrate that non-U.S. certified 1989–1991 Volkswagen Golf 4-Door Sedans, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1989–1991 Volkswagen Golf 4-Door Sedans are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence* * * *, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 108 *Lamps, Reflective Devices and Associated Equipment*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 214 *Side Impact Protection*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that non-U.S. certified 1989–1991 Volkswagen Golf 4-Door Sedans comply with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: substitution of a lens marked ''Brake'' for a lens with a noncomplying symbol on the brake failure indicator lamp.

Standard No. 110 *Tire Selection and Rims*: installation of a tire information placard.

Standard No. 111 *Rearview Mirror*: inscription of the required warning statement on the passenger side rearview mirror, or replacement of that mirror with a U.S.-model component.

Standard No. 114 *Theft Protection*: installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems*: rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 203 *Impact Protection for the Driver from the Steering Control System:* Petitioner states that the installation of an automatic restraint system, as detailed below, will satisfy the requirements of this standard.

Standard No. 208 *Occupant Crash Protection:* (a) installation of a seat belt warning buzzer; (b) installation of driver's and passenger's side automatic restraint systems, identical to those installed on the vehicle's U.S. certified counterpart. The petitioner states that the vehicles are equipped with Type II seat belts in the front and rear outboard designated seating positions, and with a Type I seat belt in the rear center designated seating position.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

The petitioner states that anti-theft devices and components on non-U.S. certified 1989–1991 Volkswagen Golf 4-Door Sedans will be inspected and replaced, where necessary, to comply with the Theft Prevention Standard found in 49 CFR Part 541, and that all body parts and panels will be inspected for conformance with the standard in targeted areas.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicles to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: October 20, 1998.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 98–28570 Filed 10–23–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub–No. 127X)]

Union Pacific Railroad Company—Abandonment Exemption—in Los Angeles County, CA

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service and Trackage Rights* to abandon and discontinue service over a 2.2-mile line of railroad on the Torrance Branch extending from milepost 500.67 to the end of the line at milepost 502.87 in Torrance, Los Angeles County, CA. The line traverses United States Postal Service Zip Code 90501.

UP has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on November 25, 1998, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by November 5, 1998. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 16, 1998, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Joseph D. Anthofer, General Attorney, Union Pacific Railroad Company, 1416 Dodge Street, Room 830, Omaha, NE 68179.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

UP has filed an environmental report which addresses the effects of the abandonment and discontinuance, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by October 30, 1998. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by UP's filing of a notice of consummation by October 26, 1999, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: October 19, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–28505 Filed 10–23–98; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations.

AGENCY: United States Information Agency.

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 F.R. 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 F.R. 27393, July 2, 1985).

ACTION: I hereby determine that the objects to be included in the exhibit ''Rembrandt: Treasures from the Rembrandt House, Amsterdam,'' imported from abroad for temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with a foreign lender. I also determine that the temporary exhibition or display of certain of the exhibit objects at the Georgia Museum of Art, Athens, Georgia, from on or about November 7, 1998, to on or about January 10, 1999, the Mobile Museum of Art, Mobile, Alabama, from on or about January 22, 1999, to on or about March 21, 1999, and the Taft Museum, Cincinnati, Ohio, from on or about April 16, 1999, to on or about June 13, 1999, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For a copy of the list of exhibit objects or for other information, contact Lorie Nierenberg, Assistant General Counsel, Office of the General Counsel; 202/619–6084. The address is U.S. Information Agency, 301 4th St., S.W., Room 700, Washington, D.C. 20547–0001.

Dated: October 22, 1998.

Les Jin,

General Counsel.

[FR Doc. 98–28709 Filed 10–23–98; 8:45 am]

BILLING CODE 8230–01–M

Corrections

Federal Register

Vol. 63, No. 206

Monday, October 26, 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.

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 99–C0002]

The Neiman Marcus Group, Inc., a Corporation; Provisional Acceptance of a Settlement Agreement and Order

Correction

In notice document 98–27990, beginning on page 55847, in the issue of Monday, October 19, 1998, make the following correction:

On page 55848, in the first column, in paragraph 4., in the first line, ''1998'' should read ''1988''.

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM95–9–003]

Open Access Same-time Information System (OASIS) and Standards of Conduct; Notice of Filing of Proposed Standards for Transmission Path Naming and Request for Comments

Correction

In notice document 98–28004, appearing on page 56022, in the issue of Tuesday, October 20, 1998, the docket number is added to read as set forth above.

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 107 and 108

[Docket No. 28859; Amendment No. 107–12, 108–17]

RIN 2120–AG32

Employment History, Verification and Criminal History Records Check

Correction

In rule document 98–25210, beginning on page 51204, in the issue of Thursday, September 24, 1998, make the following corrections:

1. On page 51204, in the third column, in the tenth line from the bottom, ''that'' should read ''the''.

2. On page 51206, in the first column, in the first full paragraph, in the fourth line from the bottom, ''of'' should read ''or''.

§ 107.31 [Corrected]

3. On page 51218, in the third column, § 107.31 (c), in the third line, ''competed'' should read ''completed''.

4. On page 51219, in the third column, in § 107.31 (h)(2), in the first line, ''not'' should read ''no''.

§ 108.33 [Corrected]

5. On page 51222, in the second column, in § 108.33 (j)(2), in the third line, ''(d)'' should read ''(a)''.

BILLING CODE 1505–01–D

federal register

Monday
October 26, 1998

Part II

Securities and Exchange Commission

17 CFR Part 201

Amendment to Rule 102(e) of the Commission's Rules of Practice; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 201

[Release Nos. 33–7593; 34–40567; 35–26929; 39–2369; IA–1771; IC–23489; File No. S7–16–98]

RIN 3235–AH47

Amendment to Rule 102(e) of the Commission's Rules of Practice

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is adopting an amendment to Rule 102(e) of the Commission's Rules of Practice. Under Rule 102(e), the Commission can censure, suspend or bar persons who appear or practice before it. The amendment clarifies the Commission's standard for determining when accountants engage in ''improper professional conduct'' under Rule 102(e)(1)(ii).

EFFECTIVE DATE: The rule amendment will become effective November 25, 1998.

FOR FURTHER INFORMATION CONTACT: Michael J. Kigin, Associate Chief Accountant, Office of the Chief Accountant, at (202) 942–4400; or David R. Fredrickson, Assistant General Counsel, Office of the General Counsel, at (202) 942–0890.

SUPPLEMENTARY INFORMATION: The Commission today is adopting an amendment to Rule 102(e).[1]

I. Executive Summary

Under Rule 102(e) of the Commission's Rules of Practice, the Commission can censure, suspend or bar professionals who appear or practice before it.[2] Today, the Commission is amending Rule 102(e) to clarify the Commission's standard for determining when accountants [3] engage in ''improper professional conduct'' under subsection (1)(ii) of the rule.

The Commission's proposal to amend Rule 102(e) was prompted by a recent judicial decision by the U.S. Court of Appeals for the District of Columbia Circuit concerning the conduct of two accountants. The court found that the Commission's opinions in that case had not articulated clearly the ''improper professional conduct'' element of the rule.[4] To address the court's concerns, the Commission published for comment a proposed amendment to Rule 102(e) on June 18, 1998.[5] To give the public additional time to comment on the proposed amendment, the Commission extended the comment period until August 20, 1998.[6]

The proposed amendment articulated three types of violations of applicable professional standards that would constitute ''improper professional conduct.'' The final rule amendment changes the focus of these provisions from types of violations to types of conduct that result in violations of applicable professional standards. Comment letters addressing these provisions generally supported two parts of the Commission's proposal: one, knowing or intentional conduct, including reckless conduct; and, two, repeated instances of unreasonable conduct. The Commission adopts these provisions in substantially the form they were proposed.

Rule 102(e) proceedings may also be based on a third type of conduct: ''highly unreasonable conduct'' that results in a violation of applicable professional standards in circumstances in which an accountant knows, or should know, that ''heightened scrutiny'' is warranted. This part of the final rule amendment differs from the proposed amendment. This provision covers a single instance of serious misconduct that may not rise to the level of intentional or knowing (including reckless) conduct. The changes from the proposed amendment emphasize that this provision applies only to deviations from professional standards—greater than ordinary negligence but less than recklessness—when an accountant knows or should know of a heightened risk. The final rule amendment refers to this situation as ''heightened scrutiny.'' The differences between the proposed amendment and the final amendment are discussed in detail below.

The amendment is intended to reach violations of applicable professional standards that demonstrate that an accountant lacks competence to practice before the Commission. An accountant who acts intentionally or knowingly, including recklessly, or highly unreasonably when heightened scrutiny is warranted, conclusively demonstrates a lack of competence to practice before the Commission. By contrast, when the Commission brings a Rule 102(e) proceeding for repeated instances of unreasonable conduct, it will also have to find that the conduct indicates a lack of competence.

The Commission received 168 comment letters on the proposed amendment to Rule 102(e). A number of commenters, including individual investors, institutional investors, public interest groups, officers and directors of public companies, and academics, supported the proposed amendment. Several certified public accountants (''CPAs'') also expressed their support for the proposed amendment. Most other commenters supported at least some aspects of the proposed amendment. A substantial number of CPAs submitted letters that expressed agreement with an August 1998 memorandum of the American Institute of Certified Public Accountants (''AICPA'') criticizing certain aspects of the proposed amendment. Most of these CPA commenters also expressed their support for the amendment to Rule 102(e) proposed in the AICPA's May 7, 1998 rulemaking petition.[7] In addition, the five largest U.S. accounting firms and members of interested committees of the American Bar Association submitted letters supporting some, but critical of other, aspects of the proposed amendment.

The Commission acted as expeditiously as practicable in adopting this amendment. The Commission wants to address promptly the *Checkosky II* court's concern that the Commission had not clearly articulated its standard for determining when accountants engage in ''improper professional conduct.'' Equally important, the Commission wants to make sure that its processes continue to be protected, and that the investing public continues to have confidence in the integrity of the financial reporting process.

Accurate financial reporting is the bedrock of our capital markets. Accountants play a vital role in assuring issuers' compliance with reporting requirements. The Commission wishes

[1] 17 CFR 201.102(e).

[2] The rule addresses the conduct of attorneys, accountants, engineers and other professionals or experts who appear or practice before the Commission. 17 CFR 201.102(e)(2) and (f)(2).

[3] This clarification addresses the conduct of accountants only, and is not meant to address the conduct of lawyers, other professionals or experts who practice before the Commission.

[4] *Checkosky* v. *SEC*, 139 F.3d 221 (D.C. Cir. 1998) (''*Checkosky II*'').

[5] Securities Act Release No. 7546 (June 12, 1998), 63 FR 33305 (June 18, 1998) (the ''Proposing Release''). In addition to publishing the Proposing Release in the Federal Register, the Commission also posted it on its Website. The address of the Commission's Website is http://www.sec.gov.

[6] Securities Act Release No. 7555 (July 15, 1998), 63 FR 39054 (July 21, 1998).

[7] On May 7, 1998, the AICPA submitted a rulemaking petition to the Commission proposing a definition for ''improper professional conduct'' under Rule 102(e)(1)(ii). Rulemaking Petition by the AICPA Concerning Rule 102(e) (''AICPA Rulemaking Petition''), SEC File No. 4–410 (May 7, 1998).

to underscore the importance of that role and the need for accountants to comply with the standards of conduct applicable to members of their profession. These professional standards include the overarching requirement that auditors exercise due care in their audit of a company's financial statements. The Commission possesses broad authority, both under the federal securities laws and its own rules, to promote and enforce compliance with professional standards.

Rule 102(e) addresses that category of professional conduct that threatens harm to the Commission's processes. The rule was not intended to cover all forms of professional misconduct. As discussed below,[8] the Commission has separate statutory authority that is available to address and deter professional misconduct that is not encompassed by Rule 102(e), as amended in this release.

The final rule amendment clarifies the Commission's standard for determining when ''improper professional conduct'' occurs under Rule 102(e)(1)(ii). The amendment will allow the Commission to bring the actions it traditionally has brought under Rule 102(e)(1)(ii). Moreover, the purpose served and the relief provided by the rule are forward-looking. For these reasons, the Commission will use this standard in all cases considered after the amendment's effective date, except where a trial before an Administrative Law Judge has already commenced,[9] regardless of when the conduct in question occurred.

II. Background

A. The Importance of Rule 102(e)

Under Rule 102(e), the Commission can censure, suspend or bar professionals who appear or practice before it. Specifically, pursuant to the rule, the Commission can impose a sanction upon a professional whom it finds, after notice and an opportunity for hearing:

(i) Not to possess the requisite qualifications to represent others; or

(ii) To be lacking in character or integrity or to have engaged in unethical or improper professional conduct; or

(iii) To have willfully violated, or willfully aided and abetted the violation of, any provision of the Federal securities laws or the rules and regulations thereunder.[10]

The Commission adopted Rule 102(e) as a ''means to ensure that those professionals, on whom the Commission relies heavily in the performance of its statutory duties, perform their tasks diligently and with a reasonable degree of competence.'' [11] Courts have recognized that it is appropriate for the Commission to use a remedial rule such as Rule 102(e) to encourage professionals to adhere to professional standards and minimum standards of competence when they practice before the Commission. In adopting the rule, the Commission did not intend to add an ''additional weapon'' to its ''enforcement arsenal,'' [12] but to protect the integrity and quality of its system of securities regulation and, by extension, the interests of the investing public.

B. The Important Role of Accountants

Accountants play many roles in the Commission's system of securities regulation. One of the most significant roles is in auditing financial statements filed with the Commission. This release focuses particular attention upon the role of auditors in the securities registration and reporting processes under the federal securities laws. The amendment, however, covers all accountants who appear or practice before the Commission.[13]

''Corporate financial statements are one of the primary sources of information available to guide the decisions of the investing public.''[14] Various provisions of the federal securities laws require publicly-held companies to file audited financial statements with the Commission.[15] These financial statements must be audited by independent accountants in accordance with generally accepted auditing standards (''GAAS'').[16] The auditor plans and performs the audit to obtain reasonable assurance that the financial statements are free from material misstatement. Commission regulations require the auditor to issue a report containing an opinion on the financial statements.[17] The auditor's opinion states whether the audit was conducted in accordance with GAAS, and whether the financial statements present fairly, in all material respects, the financial position of the company as of a specific date and the results of its operations and its cash flows for the year (or other period) then ended, in conformity with generally accepted accounting principles (''GAAP'').[18]

Investors have come to rely on the accuracy of the financial statements of public companies when making investment decisions. Because the Commission has limited resources, it cannot closely scrutinize every financial statement.[19] Consequently, the Commission must rely on the competence and independence of the auditors who certify, and the accountants who prepare, financial statements. In short, both the Commission and the investing public rely heavily on accountants to assure corporate compliance with federal securities law requirements and disclosure of accurate and reliable financial information.

The Commission and the courts have long acknowledged ''[t]he duty of accountants to those who justifiably rely on [their] reports.'' [20] The AICPA's Code of Professional Conduct contains the strong statement that ''[t]hose who rely on certified public accountants expect them to discharge their responsibilities with integrity, objectivity, due professional care, and a genuine interest in serving the public.'' [21] Due care requires auditors to discharge their responsibilities with competence and diligence and consistent with the profession's responsibility to the public. Moreover, GAAS requires that ''due professional care'' be exercised in the performance of audits.[22] Accountants who issue audit and other reports speak to investors, publicly representing that the accounting and auditing standards of the accounting profession have been followed.[23] An incompetent accountant can damage the Commission's processes

[8] *See* discussion on p.20.

[9] Where a hearing has already commenced, an Administrative Law Judge may use the Rule 102(e) standard adopted today if such use would not unfairly prejudice any party. The Administrative Law Judge may also supplement or re-open the record, if necessary, to give any party so requesting the opportunity to provide particular evidence or briefing on the Rule 102(e) standard.

[10] 17 CFR 201.102(e)(1)(i), (ii) and (iii).

[11] *Touche Ross & Co.* v. *SEC,* 609 F.2d 570, 582 (2d Cir. 1979).

[12] *Id.* at 579.

[13] *See* 17 CFR 201.102(f)(1) and (2). For example, the Commission has brought Rule 102(e) proceedings against accountants serving as officers of public companies. *See, e.g., In re Terrano,* Securities Exchange Act of 1934 (''Exchange Act'') Release No. 39485 (Dec. 23, 1997), 66 SEC Docket 494 (Jan. 20, 1998); *In re Hersh,* Exchange Act Release No. 39089 (Sept. 18, 1997), 65 SEC Docket 1170 (Oct. 14, 1997); *In re Bryan,* Exchange Act Release No. 39077 (Sept. 15, 1997), 65 SEC Docket 1129 (Oct. 14, 1997).

[14] *U.S.* v. *Arthur Young & Co.,* 465 U.S. 805, 810 (1984).

[15] *See, e.g.,* Securities Act of 1933 (''Securities Act'') Schedule A (25)–(27), 15 U.S.C. 77aa(25)–(27); Exchange Act 12(b)(1)(J)–(L), 15 U.S.C. 78*l*(b)(1)(J)–(L).

[16] Regulation S–X, 17 CFR 210.1–02(d) (1997).

[17] *See* Regulation S–X, 17 CFR 210.2–02 (1997).

[18] *Id.*

[19] *See Touche Ross,* 609 F.2d at 580–81.

[20] *In re Carter,* Exchange Act Release No. 17595 (Feb. 28, 1981), 22 SEC Docket 292, 298 (Mar. 17, 1981). *Cf. Arthur Young,* 465 U.S. at 817–18.

[21] AICPA Professional Standards, Vol. 2 ET section 53.03 (1997).

[22] AICPA Professional Standards, Vol. 1 AU section 230.01 (1997).

[23] *See Carter,* 22 SEC Docket at 298.

and erode investor confidence in our markets.[24]

C. The ''Improper Professional Conduct'' Standard Applied to Accountants

The Court of Appeals in *Checkosky II* criticized the Commission for not clearly articulating in that case when an accountant would be deemed to have engaged in ''improper professional conduct'' under Rule 102(e)(1)(ii). The amendment adopted today addresses this concern by specifying three types of conduct that constitute ''improper professional conduct.'' The Commission believes that a finding of ''improper professional conduct'' under Rule 102(e) is warranted only when an accountant lacks competence [25] to practice before the Commission.

Rule 102(e)(1)(ii) has been an effective remedial tool because it covers a range of conduct that demonstrates that a professional is a future threat to the Commission's processes.[26] Accountants who engage in intentional or knowing conduct, which includes reckless conduct, clearly pose this type of future threat. Accountants who engage in certain specified types of negligent conduct also can pose such a future threat.

Rule 102(e)(1)(ii) is not meant, however, to encompass every professional misstep.[27] A single judgment error, for example, even if unreasonable when made, may not indicate a lack of competence to practice before the Commission and, therefore, may not pose a future threat to the Commission's processes sufficient to require Commission action under Rule 102(e)(1)(ii).[28]

The Commission believes that a single judgment error that was highly unreasonable and made in circumstances warranting heightened scrutiny, however, conclusively demonstrates a lack of competence to practice before the Commission.[29] Repeated judgment errors may also indicate a lack of competence. Therefore, if the Commission finds that an accountant acted unreasonably in more than one instance (each time resulting in a violation of applicable professional standards), and that this conduct indicates a lack of competence, that accountant engaged in improper professional conduct under the standard adopted today.[30]

The Commission does not seek to use Rule 102(e)(1)(ii) to establish new standards for the accounting profession. The rule itself imposes no new professional standards on accountants. Accountants who appear or practice before the Commission are already subject to professional standards. Indeed, the Commission will only bring Rule 102(e)(1)(ii) proceedings against accountants who violate applicable professional standards in circumstances that demonstrate their lack of competence to practice before the Commission.[31]

III. Discussion of Amendment

A. The Final Rule

The amendment specifies three types of conduct that constitute ''improper professional conduct'' under Rule 102(e)(1)(ii). The amendment states:

(iv) With respect to persons licensed to practice as accountants, ''improper professional conduct'' under § 201.102(e)(1)(ii) means:

(A) Intentional or knowing conduct, including reckless conduct, that results in a violation of applicable professional standards; or

(B) Either of the following two types of negligent conduct:

(1) A single instance of highly unreasonable conduct that results in a violation of applicable professional standards in circumstances in which an accountant knows, or should know, that heightened scrutiny is warranted.

(2) Repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to practice before the Commission.

Each section of the final rule amendment refers to a violation of ''applicable professional standards.'' [32] The term ''applicable professional standards'' primarily refers to GAAP, GAAS, the AICPA Code of Professional Conduct, and Commission regulations. Also included are generally accepted standards routinely used by accountants in the preparation of statements, opinions, or other papers filed with the Commission.

The term ''applicable professional standards'' is broad enough to accommodate changes in the body of professional guidance routinely used by accountants. For example, should international accounting standards be adopted, they would become part of accepted professional guidance. Likewise, pronouncements of the Independence Standards Board, or other bodies yet to be established, would come to form part of the professional guidance that accountants routinely use. As the AICPA concluded, the term ''applicable professional standards'' is one ''that professionals are generally familiar with and can understand.'' [33]

B. Intentional or Knowing Conduct, Including Reckless Conduct

Subparagraph (A) of the amendment defines ''improper professional conduct'' to include the most blatant violations of applicable professional standards. The Commission consistently has used Rule 102(e) proceedings to address these types of violations of applicable professional standards.[34]

The Commission is adopting subparagraph (A) of the amendment in

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[24] ''In our complex society the accountant's certificate * * * can be instruments for inflicting pecuniary loss more potent than the chisel or the crowbar.'' *U.S.* v. *Benjamin,* 328 F.2d 854, 863 (2d Cir.), *cert. denied,* 377 U.S. 953 (1964).

[25] By ''competence'' the Commission means not just technical skills, but also an accountant's willingness and ability to adhere to professional standards, including standards of honesty and fair dealing.

[26] *Carter,* 22 SEC Docket at 297. Because the purpose of Rule 102(e)(1)(ii) is to address conduct that demonstrates a future threat to the Commission's processes, the rule is remedial and not punitive in nature.

[27] As Commissioner Johnson has noted:

A professional often must make difficult decisions, navigating through complex statutory and regulatory requirements, and in the case of accountants, complying with [GAAS] and applying [GAAP]. These determinations require the application of independent professional judgment and sometimes involve matters of first impression.

In re Checkosky, Exchange Act Release No. 38183 (Jan. 21, 1997), 63 SEC Docket 1948, 1976 (Feb. 18, 1997) (Johnson, Comm'r, dissenting), *rev'd Checkosky II.*

[28] Such an error, however, may violate applicable professional standards. For example, the AICPA's Code of Professional Conduct and GAAS require accountants to exercise due care. In addition, such an error may result in a violation of the federal securities laws. *See* discussion at p. 20. In either event, the person committing such an error, though not subject to discipline under Rule 102(e), would be exposed to the sanctions available under those other provisions.

[29] *See* Section III.C.1 below.

[30] *See* Section III.C.2 below.

[31] Under Rule 102(e), the Commission has other authority to protect the integrity of its processes from persons who pose a threat of future harm to those processes. For example, the Commission may censure, suspend or bar persons who the Commission finds ''not to possess the requisite qualifications to represent others.'' 17 CFR 201.102(e)(1)(i).

[32] The final rule amendment will not change the Commission's practice of bringing Rule 102(e) proceedings against accountants who lack independence. *See, e.g., In re Goodbread,* Exch. Act Rel. No. 38035 (Dec. 12, 1996), SEC Accounting Rules [Current Binder] (CCH) ¶ 5,061 (Mar. 1997); *In re Iommazzo,* Exch. Act Rel. No. 30733 (May 22, 1992), Accounting Series Releases, [1991–95 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 73,844 (July 19, 1995).

[33] Comment Letter of Richard I. Miller, General Counsel & Secretary, AICPA, at 9 (Aug. 20, 1998) (''AICPA Comment Letter'').

[34] *See, e.g., In re Finkel,* Securities Act Release No. 7401 (Mar. 12, 1997), 64 SEC Docket 103 (Apr. 8, 1997); *In re Basson,* Exchange Act Release No. 35840 (June 13, 1995), 59 SEC Docket 1650 (July 11, 1995); *In re F.G. Masquelette & Co.,* Accounting Series Release No. 68, [1937–1982 Transfer Binder] Fed. Sec. L. Rep. (CCH), ¶ 72,087 (June 30, 1982); *In re Weiner,* Exchange Act Rel. No. 14249 (Dec. 12, 1977), 13 SEC Docket 1113 (Dec. 27, 1977).

substantially the same form as it was proposed. Almost all commenters expressed support for subparagraph (A) of the proposed amendment. Clearly, an accountant who intentionally or knowingly, including recklessly, violates the professional standards conclusively demonstrates a lack of competence to appear before the Commission. Accountants who engage in this type of misconduct pose a future threat to the Commission's processes.

The Commission also requested comments on what definition of ''recklessness'' is most appropriate. Several commenters suggested that the Commission adopt a definition of ''recklessness'' used in cases brought under Section 10(b) and Rule 10b–5 of the Securities Exchange Act.[35] Although the standards of professional practice are not fraud based, the Commission agrees that, for purposes of consistency under the federal securities laws, ''recklessness'' in subparagraph (A) of the rule amendment should mean the same thing as courts have defined ''recklessness'' to mean under the antifraud provisions. ''Recklessness'' under the antifraud provisions ''is not merely a heightened form of ordinary negligence; it is an 'extreme departure from the standards of ordinary care, * * * which presents a danger of misleading buyers or sellers that is either known to the [actor] or is so obvious that the actor must have been aware of it.' '' [36] This recklessness standard is a lesser form of intent.[37]

C. Two Specific Types of Negligent Conduct

The final rule amendment also covers two specific types of negligent conduct that result in violations of applicable professional standards.[38] The Commission believes that a negligent auditor can do just as much harm to the Commission's processes as one who acts with an improper motive.[39] For this reason, the Commission has brought Rule 102(e) proceedings based on negligent conduct.[40]

The Court of Appeals in *Checkosky II* faulted the Commission for not articulating with specificity when negligent conduct by an accountant constitutes ''improper professional conduct.'' [41] The final rule amendment provides this specificity. Subparagraph (B) of the amendment defines ''improper professional conduct'' to include two specific types of negligent conduct:

(1) A single instance of highly unreasonable conduct that results in a violation of applicable professional standards in circumstances in which an accountant knows, or should know, that heightened scrutiny is warranted.

(2) Repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to practice before the Commission.

1. Highly Unreasonable Conduct

The ''highly unreasonable'' standard in subparagraph (B)(1) of the final rule amendment is an intermediate standard, higher than ordinary negligence but lower than the traditional definition of recklessness used in cases brought under Section 10(b) and Rule 10b–5 of the Exchange Act.[42] The ''highly unreasonable'' standard is an objective standard. The conduct at issue is measured by the degree of the departure from professional standards and not the intent of the accountant. The Commission believes that subparagraph (B)(1) describes conduct that poses a threat of future harm to the Commission's processes and conclusively demonstrates that the accountant lacks competence to practice before it.

The proposed rule referred to ''unreasonable'' conduct.[43] The definition the Commission adopts today includes a higher standard. The final standard reflects the Commission's conclusion that a single judgment error, even if unreasonable when made, may not indicate a lack of competence to practice before the Commission and, therefore may not pose a future threat to the Commission's processes sufficient to impose remedial sanctions. The Commission neither accepts nor condones unreasonable, or negligent, accounting or auditing errors. To the contrary, such errors could undermine accurate financial reporting. Moreover, the Commission possesses authority, wholly independent of Rule 102(e), to address and deter such errors through its enforcement of provisions of the federal securities laws that impose liability on persons, including accountants, for negligent conduct.[44]

Many commenters objected to the ''unreasonable'' formulation in this subparagraph of the proposed rule or suggested changes to this subparagraph. Some CPAs and other commenters, for example, expressed concern that the ''unreasonable'' formulation made accountants unfairly vulnerable and liable for acts of ''simple negligence'' and errors in judgment.[45] These commenters maintained that such a standard could restrict accountants' exercise of their best independent judgment, thereby operating to the

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[35] *See, e.g.,* Comment Letter of Ernst & Young LLP, at 19–20 (Aug. 20, 1998) (''Ernst & Young Comment Letter''); AICPA Comment Letter, at 8.

[36] *SEC* v. *Steadman,* 967 F.2d 636, 641 (D.C. Cir. 1992) (ellipsis in original) (quoting *Sundstrand Corp.* v. *Sun Chemical Corp.,* 553 F.2d 1033, 1045 (7th Cir.), *cert. denied,* 434 U.S. 875 (1977)); *see also Potts* v. *SEC,* 151 F.3d 810 (8th Cir. 1998) (finding recklessness under the *Steadman* standard in a Rule 102(e) proceeding).

[37] *See Ernst & Ernst* v. *Hochfelder,* 425 U.S. 185, 193–94 n.12 (1976); *see also Steadman,* 967 F.2d at 641.

[38] In other instances, the federal securities laws expressly subject auditors to liability without requiring intentional misconduct. For example, the Supreme Court has recognized that section 11 allows recovery for ''negligent conduct.'' *Herman & MacLean* v. *Huddleston,* 459 U.S. 375, 384 (1983), referring to *Ernst & Ernst* v. *Hochfelder,* 425 U.S. 185, 210 (1976). *See also* Securities Act section 17(a) (2) & (3), 15 U.S.C. 77q(a)(2) & (3); *Aaron* v. *SEC,* 446 U.S. 680 (1980). In addition, section 21C of the Exchange Act imposes liability when a person is a ''cause'' of a violation ''due to an act or omission the person knew or should have known would contribute to such violation.'' 15 U.S.C. 78u–3.

[39] The AICPA Rulemaking Petition would define improper professional conduct in a manner that includes a knowing violation and a conscious and deliberate disregard of the professional standards, as well as a course or pattern of misconduct. The amendment adopted today by the Commission, similar to the AICPA Rulemaking Petition, subjects accountants who engage in knowing misconduct as well as a course or pattern of misconduct to Rule 102(e)(1)(ii) proceedings. The amendment adopted today includes two specific types of negligent conduct. The Commission believes that the public interest will be better served by its broader definition of ''improper professional conduct.''

[40] *See, e.g., In re Gotthilf,* Exchange Act Release No. 33949 (April 21, 1994), 56 SEC Docket 1543 (May 10, 1994). *See also Danna* v. *SEC,* No. C–93–4158 (CW), 1994 WL 315877 (N.D. Cal. Feb. 8, 1994).

[41] *Checkosky II,* 139 F.3d at 224.

[42] The Commission notes that several cases interpreting the antifraud provisions of the federal securities laws use the phrase ''highly unreasonable'' as part of the definition of recklessness. *See, e.g., Sundstrand,* 553 F.2d at 1045. The Commission does not mean to incorporate that case law by using the term ''highly unreasonable'' in this context. This release defines the ''highly unreasonable'' standard—an intermediate standard higher than ordinary negligence and lower than recklessness—with care and precision. The ''highly unreasonable'' standard adopted today is not scienter-based.

[43] In fact, the proposed rule referred to ''[a]n unreasonable violation.'' At least one commenter correctly pointed out that this formulation implies there may be ''reasonable'' violations of professional standards. Comment Letter of K. Michael Conaway (Aug. 20, 1998). To eliminate this misconception, and to focus on individual competence, the final rule refers to ''unreasonable conduct,'' not ''violations.''

[44] *See, e.g.,* Securities Act section 17(a)(2) & (3), 15 U.S.C. 77q(a)(2) & (3); Exchange Act section 21C, 15 U.S.C. 78u–3; *see also* Securities Act section 11, 15 U.S.C. 77k. Accountants also may be liable for negligent conduct under the laws of various states, and subject to sanction by state accounting boards, *see, e.g.,* Fla. Admin. Code Ann. r. 61H1–36.004 (1998).

[45] AICPA Comment Letter, at 15–16; Comment Letter of Arthur Andersen LLP, at 5 (Aug. 17, 1998) (''Arthur Andersen Comment Letter''); Comment Letter of Robert K. Elliott, Partner, KPMG Peat Marwick LLP, at 10–12 (Aug. 20, 1998) (''KPMG Peat Marwick Comment Letter).

detriment of the financial reporting system.[46]

Creating an undue fear that an isolated error in judgment would result in a 102(e) proceeding could be counterproductive in some limited instances.[47] These concerns are eliminated as to Rule 102(e), or at least alleviated, by raising the threshold for improper professional conduct from one instance of ''unreasonable'' conduct to one instance of ''highly unreasonable'' conduct. Subparagraph (B)(1) of the final rule amendment does not permit the Commission to evaluate actions or judgments in the stark light of hindsight, but focuses instead on what an accountant knew, or should have known, at the time an action was taken or a decision was made. Indeed, three of the five largest accounting firms—who expressed concern that the ''unreasonable'' formulation would chill accountants'' use of their best judgment—suggested that the Commission could appropriately adopt a ''highly unreasonable'' formulation.[48] And, as one commenter pointed out, most state licensing provisions include a ''gross negligence'' standard.[49]

Some commenters questioned whether raising the standard above ordinary negligence was consistent with the purpose of Rule 102(e)(1)(ii) to protect the integrity of the Commission's processes.[50] These commenters strongly argued that a negligence standard is needed because accurate financial statements are essential to the investment decision-making process and auditors play a critical role in maintaining investor confidence in the reliability of financial statements.[51] The heightened standard of ''highly unreasonable'' strikes the appropriate balance between the Commission's need to protect its processes and accountants' ability to exercise judgment. In the Commission's view, the balance is appropriate in part because of the availability of remedies other than Rule 102(e) to address ordinary negligence. The final rule amendment, therefore, is fully consistent with the remedial purposes of Rule 102(e).

The final rule amendment provides that the Commission will bring cases under subparagraph (B)(1) only when an accountant knows or should know that heightened scrutiny is appropriate. The ''heightened scrutiny'' provision is also an objective standard. Again, the touchstone is the reasonable accountant. ''Heightened scrutiny'' would be warranted when matters are important or material, or when warning signals or other factors should alert an accountant of a heightened risk,[52] or as set forth in applicable professional standards.[53] Because of the importance of an accountant's independence to the integrity of the financial reporting system, the Commission has concluded that circumstances that raise questions about an accountant's independence always merit heightened scrutiny. Therefore, if an accountant acts highly unreasonably with respect to an independence issue, that accountant has engaged in ''improper professional conduct.''

The proposed amendment focused on conduct presenting ''a substantial risk, which is either known or should have been known,'' of making a document filed with the Commission ''materially misleading.'' At least one commenter questioned whether the phrase was overbroad.[54] Other commenters correctly noted that the Commission's standard should not depend on the impact of a violation on financial statements filed with the Commission.[55] The proper focus should be on the conduct itself, rather than on the risk of harm posed by the conduct.[56]

This change from the proposed rule amendment is consistent with the purpose of Rule 102(e)(1)(ii) to protect the Commission's processes from accountants who lack competence to appear before it. The final rule amendment addresses this issue by focusing on the behavior of an accountant under the facts and circumstances presented at the time. The standard does not permit judgment by hindsight, but rather compares the actions taken by an accountant at the time of the violation with the actions a reasonable accountant should have taken if faced with the same situation.

One commenter stated that filing a materially false or misleading document with the Commission should be a ''threshold requirement'' for a finding of improper professional conduct.[57] The Commission disagrees. The Commission does not need to show that the accountant's behavior actually caused harm; an accountant can demonstrate a lack of competence even if his conduct did not result in the filing of a false or misleading document. An auditor who fails to audit properly under GAAS—whether recklessly or highly unreasonably—should not be shielded because the audited financial statements fortuitously turn out to be accurate or not materially misleading. For example, the financial statements of a large company's subsidiary that have been audited by an accountant who acted recklessly or highly unreasonably in violation of GAAS may not be material to the consolidated financial statements filed by the company with the Commission. In that situation, the

[46] Most investors and users of financial statements, however, disagreed. *See* Comment Letter of Peter C. Clapman, Senior Vice President and Chief Counsel, Investments, TIAA-CREF, at 4 (July 16, 1998); Comment Letter of Josh S. Weston, Chairman of the Board, Automatic Data Processing, Inc. (Aug. 24, 1998) (''Weston Comment Letter''); Comment Letter of Dr. John H. Nugent (Aug. 11, 1998) (''Nugent Comment Letter''); Comment Letter of Kurt N. Schacht, Chief Legal Officer, State of Wisconsin Investment Board, at 1 (July 20, 1998); Comment Letter of Laurence A. Tisch, Co-Chairman of the Board and Co-Chief Executive Officer, Loews Corporation (July 8, 1998); Comment Letter of Steven Alan Bennett, Senior Vice President and General Counsel, Banc One Corporation, at 2 (July 21, 1998). Moreover, commenters from one state board of accountancy supported the proposed standard. Comment Letter of Martha P. Willis, Division Director, State of Florida, Department of Business and Professional Regulation (Aug. 21, 1998).

[47] However, such an error could have legal consequences. *See* discussion on p. 20.

[48] Comment Letter of J. Michael Cook, Chairman and Chief Executive Officer, and Phillip R. Rotner, General Counsel, Deloitte & Touche LLP, at 6 (''Deloitte & Touche Comment Letter''); Ernst & Young Comment Letter, at 24; Comment Letter of PricewaterhouseCoopers, at 7 (Aug. 20, 1998) (''PricewaterhouseCoopers Comment Letter'').

[49] Comment Letter of Wayne A. Kolins, National Director of Accounting and Auditing, BDO Seidman LLP, at 9 (Aug. 19, 1998) (citing Uniform Accounting Act section 10(5)). The Commission is not adopting a ''gross negligence'' standard because courts have not interpreted the term uniformly. The Commission does not want to adopt a standard that has already been subject to varying interpretations. Fairness to accountants and sound public policy is furthered by using new terminology—the ''highly unreasonable'' standard—which is defined in this release with precision and clarity. However, the term ''gross negligence'' is often used—like the Commission's use of the phrase ''highly unreasonable''—as an intermediate standard between ordinary negligence and recklessness.

[50] Weston Comment Letter; Comment Letter of William B. Patterson, Director, Office of Investments, AFL–CIO, at 2 (Aug. 10, 1998) (''AFL–CIO Comment Letter''); *see also* Comment Letter of Patricia D. McQueen, Vice President, Advocacy, Financial Reporting & Disclosure, and Jonathan J. Stokes, Vice President, Professional Conduct Program, Association for Investment Management and Research, at 3 (Aug. 18, 1998).

[51] *See* Weston Comment Letter; AFL–CIO Comment Letter, at 2; Nugent Comment Letter; BancOne Comment Letter, at 2; TIAA–CREF Comment Letter, at 3.

[52] *See, e.g., In re Hope,* Accounting and Auditing Enforcement Release No. 109A (Aug. 6, 1986), 36 SEC Docket 663, 750–55 (Sept. 10, 1986).

[53] *Cf.* AICPA Professional Standards, Vol. 1 AU sections 312 and 316 (1997).

[54] PricewaterhouseCoopers Comment Letter, at 5. *See also* AICPA Comment Letter, at 17.

[55] Comment Letter of John M. Liftin, Chair, Committee on Federal Regulation of Securities, and Richard H. Rowe, Chair, Committee on Law and Accounting, ABA Section of Business Law, at 12 (Aug. 19, 1998).

[56] *See* Comment Letter of William T. Allen, at 3 (July 10, 1998) (''Allen Comment Letter'') (suggesting this approach).

[57] PricewaterhouseCoopers Comment Letter, at 5.

accountant has demonstrated a lack of competence.

Some commenters contended that the Commission should not have special rules for accountants. These commenters claimed further that, when compared to the standard applied to lawyers, the proposed rule ''discriminates'' against accountants.[58] As explained earlier, the amendment to Rule 102(e) focuses on accountants in response to the *Checkosky II* decision and the need to assure the protection of the Commission's financial reporting process. As noted, this release does not address the conduct of lawyers.

2. Repeated Instances of Unreasonable Conduct

Subparagraph B(2) of the final rule amendment addresses ''[r]epeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards.'' Repeated instances of unreasonable conduct by an accountant, each resulting in a violation of applicable professional standards, can damage both the Commission's processes and investor confidence in the integrity of financial statements. Most commenters who addressed the issue supported the notion of bringing Rule 102(e) proceedings against accountants who engage in repeated instances of negligent conduct.[59]

The term ''unreasonable,'' as distinguished from the term ''highly unreasonable'' used in subparagraph B(1), connotes an ordinary or simple negligence standard. The lower standard of culpability is justified in this instance because the repetition of the unreasonable conduct may show the accountant's lack of competence to practice before the Commission. If an accountant fails to exercise reasonable care on more than one occasion, the Commission's processes may be threatened. More than one violation of applicable professional standards ordinarily will indicate a lack of competence.

A few commenters raised questions about what would constitute ''repeated instances'' of unreasonable conduct.[60] ''Repeated instances'' means more than once. The term ''repeated'' may encompass as few as two separate instances of unreasonable conduct occurring within one audit, or separate instances of unreasonable conduct within different audits. For example, if an auditor fails to gather evidential matter for more than two accounts, or certifies accounting inconsistent with GAAP in more than two accounts, that conduct constitutes ''repeated instances'' of unreasonable conduct. By contrast, a single error that results in an issuer's financial statements being misstated in more than one place would not, by itself, constitute a violation of this subparagraph. Certification of accounting inconsistent with GAAP in two or more situations, however, may indicate an accountant's basic unfamiliarity with the standards of the profession, which may constitute improper professional conduct under subparagraph B(2).

The Commission recognizes that ''repeated instances'' may not always demonstrate a lack of competence to practice before the Commission. Although the Commission believes that more than one instance of unreasonable conduct will ordinarily indicate a lack of competence, unlike subparagraphs (A) and (B)(1), this subparagraph requires the Commission to make a specific finding that the conduct indicates a lack of competence. The finding is based on an evaluation of the conduct itself and does not require a separate evidentiary basis. This finding is required because two isolated violations of applicable professional standards, for example GAAS, may not pose a threat to the Commission's processes.

D. Authority

Some commenters questioned the Commission's authority to adopt a negligence standard under Rule 102(e). As stated in the Proposing Release, Rule 102(e) was promulgated under the Commission's broad authority to adopt those rules and regulations necessary for carrying out its designated functions,[61] and its inherent authority to protect the integrity of its processes. As the Supreme Court has held, ''the validity of a regulation promulgated [under an agency's general rulemaking authority] will be sustained so long as it is 'reasonably related to the purposes of the enabling legislation.' ''[62]

Three U.S. Courts of Appeals have upheld the validity of Rule 102(e).[63] As the U.S. Court of Appeals for the Second Circuit recognized:

> [Rule 102(e)] represents an attempt by the Commission to protect the integrity of its own processes. It provides the Commission with the means to ensure that those professionals, on whom the Commission relies heavily in the performance of its statutory duties, perform their tasks diligently and with a reasonable degree of competence. As such the Rule is 'reasonably related' to the purposes of the securities laws.[64]

One district court has explicitly held that the Commission's Rule 102(e) authority is not limited to instances of intentional misconduct or bad faith.[65]

Some commenters either referred to, or echoed, concerns expressed in the separate opinions of two judges of the U.S. Court of Appeals for the D.C. Circuit in *Checkosky I* questioning the Commission's authority to use a negligence standard for ''improper professional conduct'' under Rule 102(e).[66] One judge suggested that, if the Commission were to determine that an accountant's negligence was a *per se* violation of Rule 102(e), the Commission may be exceeding the scope of its authority and engaging in the substantive regulation of the accounting profession.[67] Similarly, a number of commenters suggested that adoption of a simple negligence standard would exceed the Commission's authority and encroach on the responsibilities of state boards of accountancy and professional organizations.

Although the Commission believes that it has the authority to do so, the Commission is not adopting a ''simple'' or ''mere'' negligence standard. Instead, the Commission is adopting a standard under which two specific types of negligent conduct that result in a

[58] *See, e.g.*, AICPA Comment Letter, at 21–23; Ernst & Young Comment Letter, at 18–19; KPMG Peat Marwick Comment Letter, at 6–8; Arthur Andersen Comment Letter, at 7–8.

[59] *See, e.g.*, Allen Comment Letter, at 1.

[60] Ernst & Young Comment Letter, at 21–22 (suggesting that the term ''repeated'' include more than two violations); KPMG Peat Marwick Comment Letter, at 13; *see also* Comment Letter of Terry Warfield, PricewaterhouseCoopers Research Scholar, Associate Professor, University of Wisconsin (Aug. 1, 1998).

[61] *See* Securities Act section 19(a), 15 U.S.C. 77s(a), Securities Exchange Act section 23(a), 15 U.S.C. 78w(a), Public Utility Holding Company Act of 1935 section 20(a), 15 U.S.C. 79t(a), Trust Indenture Act of 1939 section 319(a), 15 U.S.C. 77sss(a), Investment Advisers Act of 1940 section 211(a), 15 U.S.C. 80b–11(a), and Investment Company Act section 38(a), 15 U.S.C. 80a–37(a).

[62] *Mourning* v. *Family Publication Services, Inc.*, 411 U.S. 356, 369 (1973) (quoting *Thorpe* v. *Housing Authority of the City of Durham*, 393 U.S. 268, 280–81 (1969)).

[63] *See Touche Ross*, 609 F.2d at 582; *Sheldon* v. *SEC*, 45 F.3d 1515, 1518 (11th Cir. 1995); *Davy* v. *SEC*, 792 F.2d 1418, 1421 (9th Cir. 1986); *see also Potts*, 151 F.3d 810.

[64] *Touche Ross*, 609 F.2d at 582 (quoting *Mourning*, 411 U.S. at 369).

[65] *See Danna* v. *SEC*, No. C–93–4158 (CW), 1994 WL 315877 (N.D. Cal. Feb. 8, 1994).

[66] The *Checkosky* decisions held that the Commission had not clearly articulated the ''improper professional conduct'' standard or the rationale for that standard. The *Checkosky* opinions did not decide the issue of the scope of the Commission's authority. One judge in *Checkosky II* wrote a separate opinion to state her disagreement with the *dictum* in *Checkosky I* questioning the Commission's authority to ensure that the professionals who practice before it adhere to minimal levels of competence.

[67] *Checkosky I*, 23 F.3d at 459 (opinion of Silberman, J.).

violation of applicable professional standards are considered a future threat to the Commission's processes. The Commission is neither broadly regulating the accounting profession nor preventing accountants from functioning in numerous areas of their professions. Instead, the Commission is protecting the integrity and quality of its processes, and this it emphatically believes—in the public interest and for the protection of investors—it has the power to do.

In addition, the standard adopted today imposes no new professional responsibilities on accountants. Instead, the final rule amendment permits the Commission to bring proceedings against accountants when their violations of professional standards threaten the Commission's processes. The Commission is not attempting to police accountants' conduct in any area other than as it affects the operation of the federal securities laws.

One other judge in *Checkosky I* suggested that the Commission's authority to adopt a negligence standard under Rule 102(e)(1)(ii) might be limited by substantive provisions of the federal securities laws, such as the antifraud provision of Exchange Act Section 10(b).[68] Some commenters contended that the Commission could not therefore adopt a definition of ''improper professional conduct'' that did not require that the accountant acted with ''scienter,'' the mental state required under the Exchange Act's antifraud provisions.[69]

The definition of ''improper professional conduct'' that the Commission adopts today does not require scienter in every instance. The Commission believes this is necessary because Rule 102(e) protects the integrity of the Commission's processes; it is not an enforcement remedy or a weapon against fraud.[70] As noted above, accountants who engage in two specific kinds of negligent conduct can pose as great a threat to the Commission's processes as accountants who knowingly violate professional standards. As one commenter noted, ''the Commission's power to regulate professional standards should not be limited by the considerations of scienter that are appropriate in a jurisprudence built on common law definitions of fraud.'' [71] In addition, as another commenter noted, the federal securities laws impose liability for negligent conduct, as well as for conduct undertaken with scienter.[72] As this commenter noted, there are other policy reasons for the Commission to apply a negligence standard to accountants who practice before the Commission.[73]

E. A ''Good Faith'' Defense

The Commission does not consider the subjective good faith of an accountant to be an absolute defense under Rule 102(e)(1)(ii).[74] Subjective good faith is inconsistent with a finding of knowing or intentional, including reckless, conduct. Moreover, a Rule 102(e) proceeding based on the particular types of negligence covered in the final rule amendment does not require any subjective inquiry into the accountant's intent; subparagraphs (B)(1) and (B)(2) of the final rule amendment are objective standards. The Commission may, however, consider the accountant's good faith when determining what sanctions would be appropriate.

IV. Summary of Regulatory Flexibility Analysis

A summary of the Initial Regulatory Flexibility Analysis (''IRFA'') on the proposed amendment to Rule 102(e) was published in the proposing release. The IRFA indicated that the proposed amendment would clarify the standard by which the Commission determines whether accountants have engaged in ''improper professional conduct.'' No comments were received on the IRFA. The Commission has prepared a Final Regulatory Flexibility Analysis (''FRFA'') in accordance with 5 U.S.C. 604 on the amendment to Rule 102(e). The following summarizes the FRFA.

The FRFA discusses the need for the rule amendment. Rule 102(e) currently authorizes the Commission to censure an accountant or deny, temporarily or permanently, an accountant's privilege of appearing or practicing before the Commission, if the accountant lacks character or integrity, or has engaged in unethical or ''improper professional conduct.'' The existing rule does not define ''improper professional conduct.''

In a recent opinion addressing the conduct of two accountants, the U.S. Court of Appeals for the District of Columbia Circuit found that the Commission's opinions in the case had not articulated clearly the ''improper professional conduct'' element of the Rule. To address the court's concerns, the Commission is clarifying the Commission's standard for determining when accountants engage in ''improper professional conduct.''

The FRFA explains that the rule amendment is designed to protect the integrity of the Commission's processes. By clarifying the standards applied in determining ''improper professional conduct,'' the amendment will help the Commission, its administrative law judges, and the courts apply the rule fairly and consistently. The amendment will also give practitioners additional guidance about the standards for proceedings under Rule 102(e).

The FRFA explains that the notice of proposed rulemaking indicated how a copy of the IRFA could be obtained, and that no one requested a copy of the IRFA. The IRFA, and the summary of the IRFA that appeared in the notice of proposed rulemaking, also solicited comments generally, and in particular on the number of small entities that would be affected by the proposed amendment and the existence or nature of the effect. No commenters discussed either the IRFA generally or the number of small entities that would be affected by the proposed amendment.

The FRFA also discusses the effect of the amendment on small entities. The FRFA states that approximately 1000 accounting firms can or do appear or practice before the Commission. While most of this practice is conducted by the ''Big Five'' firms, which are not small entities, many smaller firms do practice before the Commission. The Commission does not, however, collect information about revenues of accounting firms, which information generally is not made public by the

[68] *See Checkosky I*, 23 F.3d at 469 (opinion of Randolph, J.).

[69] *See, e.g.*, Arthur Andersen Comment Letter, at 2–3; KPMG Peat Marwick Comment Letter, at 6.

[70] Commissioner Johnson's dissent misconstrues the distinction between an enforcement remedy and a remedy that protects the integrity of the Commission's processes. Rule 102(a) does not cease to protect the Commission's processes simply because those processes are designed, in turn, to protect investors or because the Commission, in deciding what type of proceeding to bring, may sometimes consider whether it is more appropriate to bring a Rule 102(e) proceeding than an enforcement action. Rule 102(e) protects the integrity of the Commission's processes because it seeks to assure that professionals who prepare filings made with the Commission have the competence to prepare filings that comply with applicable requirements.

[71] *See* AFL–CIO Comment Letter, at 3.

[72] *See* Comment Letter of Joel Seligman, Dean and Samuel M. Fegtly Professor of Law, College of Law, University of Arizona, at 2–3 (Aug. 11, 1998).

[73] *Id.* at 3.

[74] *See In re Haskins & Sells*, Accounting Series Release No. 73 (Oct. 30, 1952), [1937–1982 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 72,092 (June 30, 1982). Similarly, an auditor who is deceived by the client and commits an audit error in reliance upon the deception does not have an automatic defense. *See generally In re Hope*, Accounting and Auditing Enforcement Release No. 109A (Aug. 6, 1986), 36 SEC Docket 663, 750–55 (Sept. 10, 1986). *See also In re Ernst & Ernst*, Accounting Series Rel. No. 248 (May 31, 1978), 14 SEC Docket 1276, 1301 and n. 71 (June 13, 1978). To the extent that *dictum* in *In re Logan*, 10 S.E.C. 982 (1942), can be read to provide for a good faith defense, the Commission believes the standard adopted today is preferable.

firms, and therefore cannot determine how many of these are small entities for purposes of the analysis. In any event, the proposed amendment should have little or no impact on small entities because the proposal simply clarifies the Commission's standard for determining when accountants engage in ''improper professional conduct.'' The Commission's standard provides a remedy for certain violations of the accountants' own professional standards and does not impose any new standards of conduct.

The FRFA notes that the amendment would not impose any new reporting, recordkeeping or compliance requirements. The FRFA discusses the various alternatives considered to minimize the effect on small entities, including: (a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources of small entities; (b) the clarification, consolidation or simplification of compliance and reporting requirements under the Rule for small entities; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the Rule, or any part thereof, for small entities. The Commission believes it would be inconsistent with the purposes of the Rule to exempt small entities from the proposed amendment. Different compliance or reporting requirements for small entities are not necessary because the proposed amendment does not establish any new reporting, recordkeeping or compliance requirements. The proposed amendment is already designed to clarify the current standard employed in Rule 102(e)(1)(ii), and the Commission does not believe it is feasible to further clarify, consolidate or simplify the Rule for small entities. Finally, the proposal does use a performance standard, not a design standard, to specify what conduct is expected of accountants; the Commission does not believe different performance standards for small entities would be consistent with the purposes of the Rule.

The FRFA notes that two commenters suggested that the proposed rule could have an adverse effect on small accounting firms and/or small public companies. The Commission believes that it has addressed the concern that a simple negligence standard might raise fees or discourage auditors from practice by raising the standard in the final amendment. Finally, the FRFA notes that one commenter contended that the proposed amendment would not impose a disproportionate impact on small entities, and that another commenter wrote that the level of competence expected of a professional must be an absolute standard, regardless of the entity's size.

A copy of the FRFA may be obtained by contacting David R. Fredrickson, Office of the General Counsel, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

V. Cost-Benefit Analysis

The Commission requested comments on any costs or benefits associated with the proposed amendment. No commenters offered any specific cost or benefit estimates. Several commenters, however, discussed the costs and benefits of the proposed amendment in general terms.

One commenter suggested that the ''costs associated with the proposed amendment appear to outweigh its potential benefits,'' [75] but offered no data to support the view. The commenter did describe the costs of the proposed amendment as ''costs associated with a decisional standard that fails to provide professionals with adequate notice of the conduct which could be subject to sanction,'' and costs created by the ''exposure of auditors to sanction based on a single negligent mistake,'' which the commenter believed ''would introduce an overly conservative bias into the financial reporting process.'' [76]

This commenter's concern that the proposed rule's use of a simple negligence standard would impose costs was shared by other commenters. Three commenters suggested that adoption of a simple negligence standard would, among other things, cause audit fees to increase.[77] Likewise, one of these commenters and one other commenter suggested that the proposed rule's use of a negligence standard would discourage competent practitioners from pursuing careers in public company auditing.[78]

The Commission does not believe that the final rule amendment imposes these costs. First, the Commission believes that the standard it adopts today defines with precision when an accountant's conduct will subject the accountant to Rule 102(e) proceedings. In fact, the clarification of the Commission's standard for ''improper professional conduct'' is one of the benefits of this final rule amendment. Second, these commenters' concern that accountants will be held liable for a single negligent mistake is addressed by the final rule amendment. As described above, the Commission is not adopting a standard that reaches single acts of simple negligence.

One commenter argued that the proposed rule's costs outweighed its benefits because it applied to ''CPAs and CPA firms whose past errors are not necessarily a precursor of future substandard practice.'' [79] The Commission believes that the final rule amendment only reaches accountants whose past violations demonstrate a lack of competence to practice before the Commission.

According to this commenter, the ''elimination of individuals and firms whose audit services are unreliable will undoubtedly have a beneficial effect in preventing future investor losses.'' [80] Weighed against this benefit, this commenter identified the costs of bringing Rule 102(e) proceedings and the costs ''associated with depriving the public of the services of qualified auditors.'' [81] This commenter stated that the number of accounting firms providing auditing services to public companies has declined sharply in the last 20 years and that there is no assurance that a further decline might not lead to increased audit fees.[82]

These comments seem directed at the costs and benefits of Rule 102(e) as a whole. The Commission only sought comment on the costs and benefits of its proposal to clarify ''improper professional conduct,'' not the costs and benefits of Rule 102(e). Moreover, the Commission has adopted a standard that is designed to reach only those accountants who lack competence to practice before the Commission. The rule amendment should not therefore ''deprive'' the public of the service of ''qualified auditors.'' The Commission therefore believes that the costs and benefits described by the commenter will not be affected by the particular standard adopted.

The Commission anticipates several benefits from the final rule amendment. The amendment will provide clearer guidance to accountants. Members of the accounting profession will better understand the standard the Commission uses to determine ''improper professional conduct.'' Also,

[75] *See* AICPA Comment Letter, at 30.

[76] *Id.* at 30–31.

[77] *See* Comment Letter of R. Fogg (Aug. 12, 1998); Comment Letter of James Backus (Aug. 13, 1998) (''Backus Comment Letter''); Comment Letter of Kyle E. Carrick (Aug. 20, 1998) (''Carrick Comment Letter'').

[78] *See* BDO Seidman Comment Letter, at 9; Backus Comment Letter.

[79] *See* ABA Comment Letter, at 7; *see also* BDO Seidman Comment Letter, at 9 (stating that proposed amendment ''makes no distinction between professionals who have erred and those who are likely to err again'').

[80] *Id.*; *see also* BDO Seidman Comment Letter, at 9.

[81] *Id.*

[82] ABA Comment Letter, at 7.

the clarified amendment will make it easier for the Commission, its administrative law judges and the courts to administer the Rule, which will further benefit the integrity of the Commission's processes. The Commission notes that its standard requires in the first instance that the accountant violate applicable professional standards. Therefore, the rule imposes no obligation that accountants are not already subject to. Rather, the amendment merely clarifies that when the Commission finds that an accountant has violated the applicable professional standards in circumstances meeting one of three standards of culpability, that accountant has engaged in ''improper professional conduct.'' The Commission also notes the existence of state accountancy boards, which can discipline accountants for violations of professional standards.

In addition, the federal securities laws and state law causes of action may provide for sanctions against accountants for related conduct. Therefore, accountants are already subject to liability and disciplinary schemes that encourage accountants to comply with applicable professional standards. After careful consideration of the comments received, the Commission continues to believe that the amendment will impose no costs.

VI. Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act requires the Commission to consider the impact of its rules on competition. Moreover, Section 2(b) of the Securities Act, Section 3(f) of the Exchange Act and Section 2(c) of the Investment Company Act of 1940 (''Investment Company Act'') require the Commission, when engaged in rulemaking that requires a public interest finding, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation.

The Commission requested data on what effect, if any, the proposed amendment would have on efficiency, competition and capital formation. No specific data was received in response to this request. One commenter asserted that the rule as proposed would cause ''the steps and costs to take a company public'' to escalate.[83] This commenter did not, however, provide any detail or explanation of why the proposed rule would cause this effect.

The Commission anticipates no effect on capital formation or efficiency, as the rule amendment clarifies an existing standard. Further, because the rule change applies equally to all accountants who practice before the Commission, and because it clarifies an existing standard, there should be no anti-competitive effect. In any event, the Commission believes that any burden on competition imposed by this amendment is necessary and appropriate in furtherance of the purpose of the Exchange Act.

VII. Statutory Authority

The Commission is adopting the amendment to the rule pursuant to its authority under Section 19(a) of the Securities Act, Section 23(a) of the Exchange Act, Section 20(a) of the Public Utility Holding Company Act of 1935, Section 319(a) of the Trust Indenture Act of 1939, Section 211(a) of the Investment Advisers Act of 1940 and Section 38(a) of the Investment Company Act.

Text of Amendment

List of Subjects in 17 CFR Part 201

Administrative practice and procedure, Investigations, Securities.

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 201—RULES OF PRACTICE

1. The authority citation for Part 201, Subpart D continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77h–1, 77j, 77s, 77u, 78c(b), 78d–1, 78d–2, 78l, 78m, 78n, 78o(d), 78o–3, 78s, 78u–2, 78u–3, 78v, 78w, 79c, 79s, 79t, 79z–5a, 77sss, 77ttt, 80a–8, 80a–9, 80a–37, 80a–38, 80a–39, 80a–40, 80a–41, 80a–44, 80b–3, 80b–9, 80b–11, and 80b–12 unless otherwise noted.

2. Amend § 201.102 by adding paragraphs (e)(1)(iv) to read as follows:

§ 201.102 Appearance and practice before the Commission.

* * * * *

(e) Suspension and disbarment. (1) Generally.

(iv) With respect to persons licensed to practice as accountants, ''improper professional conduct'' under § 201.102(e)(1)(ii) means:

(A) Intentional or knowing conduct, including reckless conduct, that results in a violation of applicable professional standards; or (B) Either of the following two types of negligent conduct:

(*1*) A single instance of highly unreasonable conduct that results in a violation of applicable professional standards in circumstances in which an accountant knows, or should know, that heightened scrutiny is warranted.

(*2*) Repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to practice before the Commission.

* * * * *

By the Commission.

Dated: October 19, 1998.

Margaret H. McFarland,

Deputy Secretary.

Dissenting Statement of Commissioner Norman S. Johnson

Although I have the deepest respect for my esteemed colleagues, I must dissent from the Commission's decision to issue today's release.[1] Despite the good faith demonstrated by my colleagues throughout this difficult rulemaking process, I believe that the Commission is repeating past mistakes by again attempting to ''push the envelope'' of its permissible authority under Rule 102(e) of our Rules of Practice, which governs the ability of professionals to practice before the Commission. In my view, the Commission's release disregards the plain import of the two *Checkosky* decisions of the United States Court of Appeals for the District of Columbia Circuit.[2] The release amends our Rule of Practice 102(e) so that an accountant's single act of negligence may amount, under some circumstances, to ''improper professional conduct,'' with the likely result of depriving an accountant of his or her livelihood.[3]

The more than 150 comment letters we have received—the overwhelming majority of them highly critical of the most important part of the proposal—demonstrate that Rule 102(e) is a matter of crucial importance to the accountants

[83] *See* Carrick Comment Letter.

[1] The standard contained in today's release (the ''Standard'') was adopted at an open meeting of the Commission on September 23, 1998. *See SEC Defines ''Improper Professional Conduct'' by Accountants*, 1998 WL 649370 (S.E.C.) (News Release Sept. 23, 1998).

[2] *See Checkosky* v. *SEC*, 23 F.3d 452 (D.C. Cir. 1994) (''*Checkosky I*''); *Checkosky* v. *SEC*, 139 F.3d 221 (D.C. Cir. 1998) (''*Checkosky II*''). The weight the Commission must attach to the views of the D.C. Circuit cannot be overstated. Under the jurisdictional provisions of the securities laws, every respondent in a Commission administrative proceeding has the option of appealing an adverse outcome to the D.C. Circuit. *See, e.g.*, 15 U.S.C. 77i(a) & 78y(a)(1).

[3] Amendment to Rule 102(e) of the Commission's Rules of Practice, Securities Act Release No. 33–7593 (October 19, 1998) (the ''Release''). Before the recodification of the Commission's Rules of Practice in 1995, Rule 102(e) was formerly designated Rule 2(e). There are no substantive differences between the two rules. When directly quoting pre-1995 materials, I have left references to ''Rule 2(e)'' intact; otherwise all references to the former Rule 2(e) appear as ''Rule 102(e).''

who practice before the Commission.[4] As Judge Randolph observed in *Checkosky:*

A proceeding under Rule 2(e) threatens ''to deprive a person of a way of life to which he has devoted years of preparation and on which he and his family have come to rely.'' * * * It is of little comfort to an auditor defending against such charges that the Commission's authority is limited to suspending him from agency practice. For many public accountants such work represents their entire livelihood. Moreover, when one jurisdiction suspends a professional it can start a chain reaction.[5]

As nature abhors a vacuum, so does the Commission: its intentions regarding the expansion of its Rule 102(e) authority have quickly become apparent. Within days of the adoption of the new standard on September 23, 1998, the Commission announced a major new initiative to address improper accounting practices.[6] It is clear to me that the Commission intends for the expanded Rule 102(e) authority it has arrogated to itself in today's release to be an important enforcement weapon in this new initiative.

The proponents of the amendment claim that it is significantly more protective of accountants than the standard set forth in the Commission's June 1998 proposing release.[7] I disagree. I think that the proposed standard will not preclude the Commission from instituting Rule 102(e) proceedings for simple negligence.

For close to thirty years, I have followed the Commission's Rule 102(e) proceedings indeed, long ago I wrote two articles on the subject.[8] In my view, today's release represents another wrong turn in the Commission's Rule 102(e) jurisprudence. Previous wrong turns resulted in the two *Checkosky* opinions by the D.C. Circuit. Rule 102(e) differs fundamentally from the securities laws enforced by the Commission. The purpose of the securities laws is to protect investors, while the professed purpose of Rule 102(e) is to protect the integrity of the Commission's administrative processes. Under today's proposal, Rule 102(e) will be just another weapon in the Commission's enforcement arsenal. The use of Rule 102(e) as just another enforcement tool eliminates the underpinning of those few Court decisions that have upheld, in the most general terms possible, the Commission's ability even to promulgate Rule 102(e). Thus, the Commission's ability to bring any Rule 102(e) proceeding—under any standard, against even the most egregious violators—may now be in jeopardy. Even assuming the Commission has adequate authority to promulgate Rule 102(e), both *Checkosky* opinions indicate that the Commission lacks authority to adopt the sort of negligence standard contained in the Release. Under *Checkosky*, the Commission may only discipline professionals under Rule 102(e) when scienter, including recklessness, is shown.[9]

My long-standing interest in the Commission's Rule 102(e) jurisprudence, as well as my deep-rooted objections to the rule's expansive and improper uses, leads me to set forth my dissenting views at some length and in the following order:

- Because it is impossible to evaluate fairly today's release without consideration of the Commission's past missteps, I outline the history of Rule 102(e) in the first section.
- Next, in the second section, I discuss the *Checkosky* case, including the D.C. Circuit's two reversals of Commission opinions.
- In the third section, I explain the basis for my view that the Commission lacks legal authority even to promulgate Rule 102(e), and that, in any event, the Commission lacks the legal authority to adopt a negligence standard under Rule 102(e).
- In the fourth section, I demonstrate that the Standard is vague, and that it does not comply with the mandate of both *Checkosky I* and *Checkosky II* that we adopt a clear standard.
- In the fifth section, I set forth the various reasons why—even assuming adequate legal authority and clarity—it is not in the public interest for the Commission to adopt the Standard.
- Next, in the sixth section, I question whether the Commission gave adequate notice in its Proposing Release that it might adopt certain aspects of today's release.
- Finally, in the seventh section, I set forth the likely ways in which the Commission will seek to expand its Rule 102(e) authority in the future.

I. ''Administrative Oaks'' and ''Legislative Acorns'': A Brief History of Rule 102(E)

In one of its landmark securities decisions restricting the growth of implied private actions under the federal securities laws, the Supreme Court remarked that Rule 10b–5 was ''a judicial oak which has grown from little more than a legislative acorn.'' [10] The Commission's use of Rule 102(e) to regulate professional conduct might similarly be described as an ''administrative oak'' growing out of a ''legislative acorn.'' There is no express statutory provision authorizing the Commission to discipline professionals; instead, a handful of courts have upheld the Commission's promulgation of Rule 102(e) as impliedly proper because the rule is '' 'reasonably related' to the purposes of the securities laws.'' [11] I fully subscribe to the views of a distinguished predecessor, Commissioner Roberta Karmel, who observed in a Rule 102(e) case almost twenty years ago that ''[t]he administrative implication of

[4] *See, e.g.*, Richard I. Miller, General Counsel & Secretary, American Institute of Certified Public Accountants (''AICPA''), Comment Letter (''CL'') 84; Arthur Andersen LLP, CL 98; Ernst & Young, LLP, CL 100; *see also* John M. Liftin, Chair, Committee on Federal Regulation of Securities, and Richard H. Rowe, Chair, Committee on Law and Accounting, American Bar Association, Section of Business Law (''ABA''), CL 81.

[5] *Checkosky I*, 23 F.3d at 479 (Randolph, J.) (quoting Henry J. Friendly, *''Some Kind of Hearing''*, 123 U. Pa. L. Rev. 1267, 1297 (1975)). Almost without exception, the comment letters bear out Judge Randolph's remarks, indicating that even if an accountant receives ultimate vindication, the mere bringing of charges of ''improper professional conduct'' by the Commission may well have a ''career-crippling'' effect. *See* Arthur Andersen, CL 98 at 1 & 5–6; *see also, e.g.*, J.D. Fluno, Vice Chairman, W.W. Grainger, Inc., CL 75; ABA, CL 81 at 11.

[6] Remarks by SEC Chairman Arthur Levitt, *The ''Numbers Game''*, New York University Center for Law and Business (Sept. 28, 1998) <http://www.sec.gov/news/speeches/spch220.txt>; SEC Press Release 98–95 (Sept. 28, 1998) <http://www.sec.gov/news/press/98–95.txt> (announcing ''a major address on the state of accounting'' that will express Commission ''concern that the quality of financial reporting in corporate America is eroding and * * * [will] present an action plan that calls on the entire financial community to remedy the problem''); *see* Jube Shiver Jr., *SEC to Crack Down on Inflated Earnings*, L.A. Times, Sept. 29, 1998, at B1; *see also* Saul Hansell, *S.E.C. Crackdown on Technology Write-Offs*, N.Y. Times, Sept. 29, 1998, at C1.

[7] Proposed Amendment to Rule 102(e) of the Commission's Rules of Practice, Securities Act Release No. 7546, 1998 WL 311988 (S.E.C.) (June 12, 1988), 63 Fed. Reg. 33305 (June 18, 1998) (the ''Proposing Release'').

[8] *See* Norman S. Johnson, *The Dynamics of SEC Rule 2(e): A Crisis for the Bar*, 1975 Utah L. Rev. 629; Norman S. Johnson, *The Expanding Responsibilities of Attorneys in Practice Before the SEC: Disciplinary Proceedings Under Rule 2(e) of the Commission's Rules of Practice*, 25 Mercer L. Rev. 637 (1974).

[9] *See Robert D. Potts*, Exchange Act Release No. 39126, 1997 WL 690519 (S.E.C.), at *12 (Sept. 29, 1997) (Commissioner Johnson, concurring), *aff'd on other grounds*, 151 F.3d 810 (8th Cir. 1998); *David J. Checkosky*, Exchange Act Release No. 38183, 1997 WL 18303 (S.E.C.), at *14 (Jan. 21, 1997) (Commissioner Johnson, dissenting), *rev'd*, *Checkosky II*, 139 F.3d 221.

[10] *Blue Chip Stamps* v. *Manor Drug Stores*, 421 U.S. 732, 737 (1975).

[11] *Checkosky I*, 23 F.3d at 455 (Silberman, J.) (quoting *Touche Ross & Co.* v. *SEC*, 609 F.2d 570, 582 (2d Cir. 1979)); *see also, e.g.*, Daniel L. Goelzer & Susan Ferris Wyderko, *Rule 2(e): Securities and Exchange Commission Discipline of Professionals*, 85 Nw. U. L. Rev. 652, 652 (1991) (lawyers and accountants ''are not subject to direct regulation under the federal securities laws,'' and their licensing and discipline is ''largely a matter committed to state licensing bodies and professional associations'').

prosecutorial remedies under federal legislation is rife with the same evil'' possessed by ''judicial implication of private rights of action.'' [12] In my view, the same disfavor the Supreme Court has enunciated towards implied private rights of action is equally applicable—and probably more so—to implied prosecutorial remedies such as those the Commission utilizes under Rule 102(e).[13]

The Commission first promulgated Rule 102(e) in 1935.[14] In its initial form, the rule contained a requirement that attorneys be admitted to practice before the Commission (as was then required of attorneys and accountants who sought to represent persons before the Internal Revenue Service).[15] In 1938, however, the Commission struck the admission requirement, and since then the rule's only use has been to permit the Commission to censure, suspend or disbar professionals.[16]

Although Rule 102(e) has caused a great deal of controversy since its inception,[17] it was only used sparingly

[12] *Keating, Muething & Klekamp,* 47 S.E.C. 95, 111 (1979) (Commissioner Karmel, dissenting). Unfortunately, Commissioner Karmel dissented in the context of a settled enforcement action, so there was no opportunity for judicial review of the issues she raised. Several commentators have suggested that attempts to evade appellate review are a hallmark of the Commission's Rule 102(e) jurisprudence. *See, e.g.,* Ann Maxey, *SEC Enforcement Actions Against Securities Lawyers: New Remedies* v. *Old Policies,* 22 Del. J. Corp. L. 537, 552–53 (1997); Richard W. Painter & Jennifer E. Duggan, *Lawyer Disclosure of Corporate Fraud: Establishing a Firm Foundation,* 50 S.M.U. L. Rev. 225, 271 (1996).

[13] *See Touche Ross & Co.* v. *Redington,* 442 U.S. 560 (1979); *see also, e.g., Central Bank* v. *First Interstate Bank,* 511 U.S. 164 (1994); *Keating,* 47 S.E.C. at 111 & 116 n.35 (Commissioner Karmel, dissenting). The Supreme Court has approved the use of implied ancillary remedies, such as when the Commission seeks, e.g., disgorgement as a remedy in a typical enforcement action, but that situation seems readily distinguishable from Rule 102(e), in which both the cause of action and its remedy are implied. *Cf. Franklin* v. *Gwinnett County Public Schools,* 503 U.S. 50 (1992) (approving implied remedy to express cause of action).

[14] *See Touche Ross & Co.* v. *SEC,* 609 F.2d 570, 578 n.13 (2d Cir. 1979) (''*Touche Ross*''); Harold Marsh, Jr., *Rule 2(e) Proceedings,* 35 Bus. Law. 987, 987 (1980).

[15] Marsh, *supra* note 14, 35 Bus. Law. at 987.

[16] *Id.* Although Rule 102(e) reaches all types of professionals who might practice before the Commission, including engineers or expert witnesses, there have been only a few cases in the rule's 63-year history that did not involve either a lawyer or an accountant.

[17] The following is a sampling of the literature discussing the Commission's use of Rule 102(e), the vast bulk of it extraordinarily critical—particularly when one discounts articles by Commission officials defending policies they themselves have helped formulate and administer. (I find it ironic that the number of law review articles discussing Rule 102(e) dwarfs the number of actual federal court decisions construing it by a factor of approximately 10 to 1). *See, e.g.,* Roberta S. Karmel, *Regulation by Prosecution: The Securities and Exchange Commission* vs. *Corporate America* 173–83 (1982); ABA, *Statement of Policy Adopted by ABA Regarding Responsibilities and Liabilities of Lawyers in Advising with Respect to the Compliance of Clients with Laws Administered by the Securities and Exchange Commission,* 31 Bus. Law. 543, 545 (1975); ABA Task Force on Rule 102(e) Proceedings, *Report of the Task Force on Rule 102(e) Proceedings: Rule 102(e) Sanctions Against Accountants,* 52 Bus. Law. 965 (1997); David H. Barber, *Lawyer Duties in Securities Transactions Under Rule 2(e): The* Carter *Opinions,* 1982 B.Y.U. L. Rev. 513; Arthur Best, *Shortcomings of Administrative Agency Lawyer Discipline,* 31 Emory L.J. 535 (1982); Judah Best, *In Opposition to Rule 2(e) Proceedings,* 36 Bus. Law. 1815 (1981); Dennis J. Block & Charles J. Ferris, *SEC Rule 2(e)—A New Standard for Ethical Conduct or an Unauthorized Web of Ambiguity,* 81 Cap. U. L. Rev. 501 (1982); John C. Burton, *SEC Enforcement and Professional Accountants: Philosophy, Objectives and Approach,* 28 Vand. L. Rev. 19 (1975); Michael P. Cox, *Regulation of Attorneys Practicing Before Federal Agencies,* 34 Case W. Res. L. Rev. 173 (1984); Joseph C. Daley & Roberta S. Karmel, *Attorneys' Responsibilities: Adversaries at the Bar of the SEC,* 24 Emory L.J. 747 (1975); Mitchell F. Dolin, *SEC Rule 2(e): After* Carter-Johnson: *Toward a Reconciliation of Purpose and Scope,* 9 Sec. Reg. L.J. 331 (1982); James R. Doty et al., *The Professional as Defendant,* in 23rd Annual Institute on Securities Regulation 681 (PLI Corp. Law & Practice Course Handbook Series No. B4–6978, 1991); Robert A. Downing & Richard L. Miller, Jr., *The Distortion and Misuse of Rule 2(e),* 54 Notre Dame Law. 774 (1979); Robert W. Emerson, *Rule 2(e) Revisited: SEC Disciplining of Attorneys since* In re Carter, 29 Am. Bus. L.J. 155 (1991); Ralph C. Ferrara, *Administrative Disciplinary Proceedings Under Rule 2(e),* 36 Bus. Law. 1807 (1981); Ted J. Fiflis, *Choice of Federal or State Law for Attorneys' Professional Responsibility in Securities Matters,* 56 N.Y.U. L. Rev. 1236 (1981); Monroe H. Freedman, *A Civil Libertarian Looks at Securities Regulation,* 35 Ohio St. L.J. 280 (1974); Ray Garrett, Jr., *Social Responsibility of Lawyers in Their Professional Capacity,* 30 U. Miami L. Rev. (1976); Daniel L. Goelzer, *The SEC and Opinion Shopping: A Case Study in the Changing Regulation of the Accounting Profession,* 52 Brook. L. Rev. 1057 (1987); Stuart C. Goldberg, *Policing Responsibilities of the Securities Bar: The Attorney-Client Relationship and the Code of Professional Responsibility—Considerations for Expertizing Securities Attorneys,* 19 N.Y.L.F. 221 (1973); Paul Gonson, *Disciplinary Proceedings and Other Remedies Available to the SEC,* 30 Bus. Law. 191 (1975); Kent Gross, *Attorneys and Their Corporate Clients: SEC Rule 2(e) and the Georgetown ''Whistle Blowing'' Proposal,* 3 Corp. L. Rev. 197 (1980); Samuel H. Gruenbaum, *The SEC's Use of Rule 2(e) to Discipline Accountants and Other Professionals,* 56 Notre Dame Law. 820 (1981); Samuel H. Gruenbaum & Marc I. Steinberg, *Accountants' Liability and Responsibility: Securities, Criminal and Common Law,* 13 Loy. L.A. L. Rev. 247 (1980); Stanley A. Kaplan, *Some Ruminations on the Role of Counsel for a Corporation,* 56 Notre Dame L. Rev. 873 (1981); Roberta S. Karmel, *A Delicate Assignment: The Regulation of Accountants by the SEC,* 56 N.Y.U. L. Rev. 959 (1981); Roberta S. Karmel, *Attorneys' Securities Law Liabilities,* 27 Bus. Law. 1153 (1972); John J. Kelleher, *Scourging the Moneylenders from the Temple: The SEC, Rule 2(e) and the Lawyers,* 17 San Diego L. Rev. 501 (1980); Michael R. Klein, *The SEC and the Legal Profession: Material Adverse Developments,* 11 Inst. on Sec. Reg. (PLI) 604 (1979); Reynold Kosek, *Professional Responsibility of Accountants and Lawyers Before the Securities and Exchange Commission,* 72 L. Libr. J. 453 (1979); Steven C. Krane, *The Attorney Unshackled: SEC Rule 2(e) Violates Clients' Sixth Amendment Right to Counsel,* 57 Notre Dame L. Rev. 50 (1981); Werner Kronstein, *The* Carter-Johnson *Case: A Higher Threshold for SEC Actions Against Attorneys,* 9 Sec. Reg. L.J. 293 (1981); Michael R. Lanzarone, *Professional Discipline: Unfairness and Inefficiency in the Administrative Process,* 51 Fordham L. Rev. 818 (1983); Philip H. Levy, *Regulation of the Accounting Profession Through Rule 2(e) of the SEC's Rules of Practice: Valid or Invalid Exercise of Power?,* 46 Brook. L. Rev. 1159 (1980); Frederick D. Lipman, *The SEC's Reluctant Police Force: A New Role for Lawyers,* 49 N.Y.U. L. Rev. 437 (1974); Simon M. Lorne, *The Corporate and Securities Adviser, the Public Interest, and Professional Ethics,* 76 Mich. L. Rev. 423 (1978); Lewis D. Lowenfels, *Expanding Public Responsibilities of Securities Lawyers: An Analysis of the New Trend in Standard of Care and Priorities of Duties,* 74 Colum. L. Rev. 412 (1974); Harold L. Marquis, *An Appraisal of Attorneys' Responsibilities Before Administrative Agencies,* 26 Case W. Res. L. Rev. 285 (1976); Arthur F. Mathews, *SEC Injunctive Proceedings Against Attorneys,* 36 Bus. Law. 1819 (1981); Christine Neylon O'Brien, *SEC Regulation of the Accounting Profession: Rule 2(e),* 21 Gonz. L. Rev. 675 (1985); L. Ray Patterson, *The Limits of the Lawyer's Discretion and the Law of Legal Ethics:* National Student Marketing *Revisited,* 1979 Duke L.J. 1251; Marvin G. Pickholtz, *SEC Regulation of Professionals,* 4 Rev. Fin. Serv. Reg. 165 (1988); Irving M. Pollack, *The SEC Lawyer: Who is His Client and What are His Responsibilities?,* 49 Geo. Wash. L. Rev. 453 (1981); Martin B. Robins, *Policeman, Conscience or Confidant: Thoughts on the Appropriate Response of a Securities Attorney Who Suspects Client Violations of the Federal Securities Laws,* 15 J. Marshall L. Rev. 373 (1982); Michel Rosenfeld, *The Transformation of the Attorney-Client Privilege: In Search of an Ideological Reconciliation of Individualism, the Adversary System, and the Corporate Client's SEC Disclosure Obligations,* 33 Hastings L.J. 495 (1982); Quinton F. Seamons, *Inside the Labyrinth of the Elusive Standard Under the SEC's Rule 2(e),* 23 Sec. Reg. L.J. 57 (1995); Morgan Shipman, *The Need for SEC Rules to Govern the Duties and Civil Liabilities of Attorneys Under the Federal Securities Statutes,* 34 Ohio St. L.J. 231 (1973); George J. Siedel, *Rule 2(e) and Corporate Officers,* 39 Bus. Law. 455 (1984); Marshall L. Small, *An Attorney's Responsibilities Under Federal and State Securities Laws: Private Counselor or Public Servant?,* 61 Cal. L. Rev. 1189 (1973); Mindy Jaffe Smolevitz, *The Opinion Shopping Phenomenon: Corporate America's Search for the Perfect Auditor,* 52 Brook. L. Rev. 1077 (1987); Theodore Sonde, *Professional Disciplinary Proceedings,* 30 Bus. Law. 157 (1975); Marc I. Steinberg, *Attorney Liability Under the Securities Laws,* 45 Sw. L.J. 711 (1991); Wallace L. Timmeny, *Responsibilities of Lawyers in Connection with the Sale of Municipal Securities,* 36 Bus. Law. 1799 (1981); Francis M. Wheat, *The Impact of SEC Professional Responsibility Standards,* 34 Bus. Law. 969 (1979); David B. Wilkins, *Who Should Regulate Lawyers?,* 105 Harv. L. Rev. 799 (1992); Harold M. Williams, *Corporate Accountability and the Lawyer's Role,* 34 Bus. Law. 7 (1978); Marie L. Coppolino, Note, *Rule 2(e) and the Auditor: How Should the Securities and Exchange Commission Define its Standard of Professional Conduct?,* 63 Fordham L. Rev. 2227 (1995); Michael J. Crane, Note, *Disciplinary Proceedings Against Accountants: The Need for a More Ascertainable Improper Professional Conduct Standard in the SEC's Rule 2(e),* 53 Fordham L. Rev. 351 (1984); Robert G. Day, Note, *Administrative Watchdogs or Zealous Advocates? Implications for Legal Ethics in the Face of Expanded Attorney Liability,* 45 Stan. L. Rev. 645, 673 (1993); William Kenneth C. Dippel, Comment, *Attorney Responsibility and* Carter *Under SEC Rule 2(e): The Powers That Be and the Fear of the Flock,* 36 Sw. L.J. 897 (1982); Todd J. Flagel, Note, *Securities Law: SEC Must Clarify Its Position as to the Level of Culpability that Must Be Shown to Constitute a Rule*

during the first 35 years or so of its existence.[18] Things changed in the early 1970's when the Commission embarked on its so-called ''access'' theory of securities law enforcement.[19] As a consequence of its belief that access to capital markets is controlled by a limited number of professionals, the Commission sought to achieve maximum deterrent value from its limited enforcement resources by suing the gatekeepers, rather than simply proceeding against the principal wrongdoers.[20] Accordingly, the Commission brought wave-upon-wave of actions—including many Rule 102(e) administrative proceedings—against securities professionals, accountants and lawyers.[21]

The high water mark of the Commission's ''access'' theory was probably the *National Student Marketing* case.[22] In *National Student Marketing*, the Commission brought an injunctive action that charged two nationally prominent law firms and several of their respective partners with aiding and abetting a securities fraud based on their alleged failure to take proper action when they ''permitted'' their clients to complete a merger that had received shareholder approval based on a proxy statement containing materially misleading financial information.[23] The Commission's complaint alleged that the lawyers had a duty to insist that their clients resolicit proxies based on corrected information, and that, if the clients refused to follow this advice, the lawyers were required to resign and to report the alleged securities violations to the Commission.[24] In practical terms, the Commission sought to make involuntary ''whistle-blowers'' or government agents out of private counsel by ''plac[ing] upon the lawyer a responsibility to investigate his clients'' activities in search for possible violations of law.''[25]

In discussing *National Student Marketing*, one Commissioner went so far as to state that, at least in the context of a securities transaction, a lawyer's role was ''more akin to that of an auditor,'' i.e., the lawyer would ''have to exercise a measure of independence'' from his client and would have to be ''acutely cognizant of his responsibility to the public who engage in securities transactions that would never have come about if not for his professional presence.''[26] Although the Commission brought *National Student Marketing* as an injunctive action in federal court, it soon changed its emphasis in professional discipline cases and increasingly brought them as administrative proceedings under Rule 102(e).[27]

Although *National Student Marketing* involved charges against law firms and individual lawyers, the Commission did not limit its overreaching to the legal profession—indeed, one contemporaneous commentary referred to accountants as the ''most actively besieged profession'' under Rule 102(e).[28] In *SEC* v. *Arthur Young & Co.*, a case arising from the activities of an oil and gas venture promoter over a seven-year period in the 1960's, the Commission charged a nationally prominent accounting firm and the responsible auditors with committing or aiding and abetting securities fraud.[29] Because the case predated the Supreme Court's decision requiring the Commission to prove scienter in its Rule 10b–5 enforcement cases,[30] the Ninth Circuit assumed that ''negligence, rather than scienter, constitutes the standard by which an accountant's or auditor's

2(e)(1)(ii) Violation By Accountants, 20 Dayton L. Rev. 1083 (1995); Note, *Attorney Discipline by the SEC: 2(e) or not 2(e)?*, 17 New Eng. L. Rev. 1267 (1982); Note, *The Duties and Obligations of the Securities Lawyer: The Beginning of a New Standard for the Legal Profession?*, 1975 Duke L.J. 121; Note, *SEC Disciplinary Proceedings Against Attorneys Under Rule 2(e)*, 79 Mich. L. Rev. 1270 (1981); Comment, *SEC Disciplinary Rules and the Federal Securities Laws: The Regulation, Role and Responsibilities of the Attorney*, 1972 Duke L.J. 969.

[18] As to the lawyers, the first Rule 102(e) proceeding was not brought until 1950, and only five cases were brought before 1960. *See Keating*, 47 S.E.C. at 112 (Commissioner Karmel, dissenting). The number of Rule 102(e) cases against accountants during from 1935 to 1970 was also de minimis by comparison to recent years when the Commission has brought (according to statistics supplied by our Office of the Chief Accountant) an average of over 25 cases annually. *See* Marsh, *supra* note 14, 35 Bus. Law. at 987–89. Commentators seem to agree that, for various reasons, it is impossible to obtain accurate historical statistics regarding Rule 102(e) proceedings, particularly for the period before 1975. *See* Emerson, *supra* note 17, 29 Am. Bus. L.J. at 173–83 (comprehensive effort to tabulate number and type of Rule 102(e) proceedings against lawyers through 1989); Marsh, *supra* note 14, 35 Bus. Law. at 988.

[19] *See, e.g.*, Burton, *supra* note 17, 28 Vand. L. Rev. at 19–20; Simon M. Lorne & W. Hardy Callcott, *Administrative Actions Against Lawyers Before the SEC*, 50 Bus. Law. 1293, 1297 (1995); Maxey, *supra* note 12, 22 Del. J. Corp. L. at 549.

[20] Harvey L. Pitt & Karen L. Shapiro, *Securities Regulation by Enforcement: A Look Ahead at the Next Decade*, 7 Yale J. on Reg. 149, 171–74 (1990).

[21] *Id.; see also* Emerson, *supra* note 17, 29 Am. Bus. L.J. at 176 (for attorneys, peak years of Rule 102(e) enforcement activity were 1975 through 1977, when the Commission brought actions against 53 attorneys and three law firms).

[22] *SEC* v. *National Student Marketing Corp.*, [1971–1972 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 93,360, at 91,913 (D.D.C. 1972) (complaint). Less than two weeks after the filing of the *National Student Marketing* complaint, the Wall Street Journal reported that it had become the ''best-read document since *Gone With the Wind*.'' Green, *Irate Attorneys—A Bid to Hold Lawyers Accountable to Public Stuns, Angers Firms*, Wall St. J., Feb. 15, 1972, at 1, col. 1; *see also* Samuel H. Gruenbaum, *Corporate/Securities Lawyers: Disclosure, Responsibility, Liability to Investors, and* National Student Marketing Corp., 54 Notre Dame Law. 795 (1979).

[23] *National Student Marketing*, [1971–1972 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 93,360, at 91,913; *see also* Lorne, *supra* note 17, 76 Mich. L. Rev. at 455.

[24] *SEC* v. *National Student Marketing Corp.*, [1971–1972 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 93,360 at ¶ 48(i).

[25] Milton V. Freeman, *Recent Governmental Attacks on the Private Lawyer as an Infringement of the Constitutional Right to Counsel*, 36 Bus. Law. 1791, 1792 (1981); *see* Cox, *supra* note 17, 34 Case W. Res. L. at 204 (referring to attempts by Commission towards the ''enlistment of attorneys as agents of the government''); Wilkins, *supra* note 17, 105 Harv. L. Rev. at 836 (Commission has appeared to engage in ''overzealous enforcement'' actions against lawyers in order to encourage them to serve as watchdogs over their clients). *Accord* Mathews, *supra* note 17, 36 Bus. Law. at 1829; Marc I. Steinberg, *Attorney Liability for Client Fraud*, 1991 Colum. Bus. L. Rev. 1, 9.

[26] A.A. Sommer, *The Emerging Responsibilities of the Securities Lawyer*, [1973–1974 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 79,631, 83,686, at 83,689 to 83,690 (Jan. 24, 1974). I have the highest regard for former Commissioner Sommer, but I have long believed that this notion of lawyer as auditor is contrary to traditional canons of professional responsibility. *See* Johnson, *supra* note 8, 1975 Utah L. Rev. at 645–50.

[27] During the 1970's, federal courts increasingly placed limitations on the Commission's ability to bring suit and obtain injunctive relief. *See, e.g., Ernst & Ernst* v. *Hochfelder*, 425 U.S. 185, 197–198 (1976) (proof of scienter required in a Rule 10b–5 action); *SEC* v. *Commonwealth Chemical Securities, Inc.*, 574 F.2d 90, 98 (2d Cir. 1978) (''current judicial attitude toward the issuance of injunctions on the basis of past violations at the SEC's request has become more circumspect than in earlier days''). Convincing evidence exists demonstrating that the Commission increased its use of Rule 102(e) administrative proceedings after *National Student Marketing* as a means to circumvent these judicially-imposed limitations. *See* Downing & Miller, *supra* note 17, 54 Notre Dame Law. at 783–85 (quoting June 1976 memorandum from Commission's General Counsel to Commission's Chairman suggesting that the Commission might appropriately bring Rule 102(e) actions in situations in which a professional's conduct would not satisfy the *Hochfelder* requirement of scienter for Rule 10b–5 actions); *see also, e.g.*, Arthur Best, *supra* note 17, 31 Emory L.J. at 550 (lesser negligence standard ''may explain why SEC chose'' to bring Rule 102(e) action, rather than injunctive action against major accounting firm, and this option ''can be viewed either as an advantage of the administrative process or as a dangerous discretionary weapon that ought not to be available to the agency''); James P. Hemmer, *Resignation of Corporate Counsel: Fulfillment or Abdication of Duty*, 39 Hastings L.J. 641, 650 (1988) (''The unwillingness of the courts to issue injunctions when there is no likelihood of recurring violation * * * is at least one of the principal factors in the SEC's increasing use of rule 2(e) proceedings to govern the discipline of professionals.'').

[28] *See* Downing & Miller, *supra* note 17, 54 Notre Dame Law. at 775 n.6; *see also id.* at 774 (''Recent 2(e) proceedings against accountants demonstrate that the SEC has converted the rule from one designed to serve the limited salutary purpose of exercising disciplinary authority over the incompetent, unethical or dishonest accounting practitioner to a rule which has effectively been utilized to pervasively regulate accounting firms and the profession as a whole.'').

[29] 590 F.2d 785, 786 (9th Cir. 1979).

[30] *Aaron* v. *SEC*, 446 U.S. 680 (1980).

performance must be measured.''[31] Before the district court, the Commission argued that the firm and its auditors performed their work ''with blinders on'' and that they should have done ''more'' to reveal the risks to those who invested in the ventures.[32] On appeal, the Commission apparently argued that the accountants had failed to perform their audit in a manner that would have revealed to ''an ordinary prudent investor, who examined the * * * audits or financial statements, a reasonably accurate reflection of the financial risks * * *.''[33] The Ninth Circuit rejected both formulations of the Commission's argument, noting:

> To accept the SEC's position would go far toward making the accountant both an insurer of his client's honesty and an enforcement arm of the SEC. We can understand why the SEC wishes to so conscript accountants. Its frequently late arrival on the scene of fraud and violations of the securities laws almost always suggest that had it been there earlier with the accountant it would have caught the scent of wrong-doing and, after an unrelenting hunt, bagged the game. What it cannot do, the thought goes, the accountant can and should. The difficulty with this is that Congress has not enacted the conscription bill that the SEC seeks to have us fashion and fix as an interpretive gloss on existing securities laws.[34]

To be sure, the Commission's attitude towards the conscription of accountants—and their purported wearing of ''blinders,'' or failures to observe and respond to ''red flags''—persists to this day.[35]

Many legal scholars and members of the securities bar and industry, myself among them, decried the Commission's overreaching in *National Student Marketing, Arthur Young* and similar cases.[36] One commentary described the Commission's efforts, colorfully but accurately, as a '' 'reign of terror' on broker-dealers, accountants and attorneys.''[37] Indeed, for more than twenty-five years, the Commission's attempts to set standards for professional conduct, under Rule 102(e) and otherwise, have caused much dissension on the Commission itself.[38] The roster of distinguished former Commissioners who have expressed serious doubts about the Commission's expansive uses of Rule 102(e) and other attempts to set professional standards includes: Edward H. Fleischman, Roberta S. Karmel, Philip Lochner, Jr., Richard Y. Roberts, and Steven M.H. Wallman.[39]

Much of the criticism of the Commission's efforts in this area has focussed on two factors. First, neither the Commission nor its administrative law judges (''ALJ's'') have a statutory mandate to establish ethical standards nor any special expertise in the area of professional responsibility; second, the threat of disciplinary action might well intimidate and interfere with the exercise of independent professional judgment and, as to lawyers, might deprive clients of their constitutional right to counsel.[40] These fears were far from academic: the *National Student Marketing* case clearly affected the ability and willingness of the securities bar to take zealous positions before the Commission.[41] According to an article co-written by the then-General Counsel of the Commission, the controversy caused by *National Student Marketing* and similar cases became so heated that it affected ''the Commission's ability to carry out its statutory mandates,'' because it lessened the necessary cooperation and trust between the Commission, its staff and the securities bar and industry.[42]

In response to the well-deserved firestorm of criticism caused by *National Student Marketing* and similar cases, the Commission retreated.[43] As to lawyers, the Commission announced that it would commence Rule 102(e) actions only where it could demonstrate scienter and that it would cease bringing ''original'' Rule 102(e) actions (i.e., the Commission would only bring an administrative proceeding against a lawyer if a federal court first determined that the lawyer had violated the federal securities laws).[44] As to accountants, the

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[31] 590 F.2d at 787.

[32] 590 F.2d at 787.

[33] 590 F.2d at 787–88.

[34] 590 F.2d at 788.

[35] In a later case upholding disciplinary sanctions imposed by the Commission on an accountant under Rule 102(e), the Ninth Circuit purported to distinguish *Arthur Young. See Davy* v. *SEC,* 792 F.2d 1418, 1422 (9th Cir. 1986). I confess to being confused by *Davy*—one would think that if the Commission were barred from directly ''conscript[ing] accountants'' under the substantive securities laws, it would also be barred from indirectly ''conscript[ing] accountants'' under Rule 102(e). The real distinction seems to be that *Davy,* unlike *Arthur Young,* involved truly egregious scienter-based misconduct by an accountant. *See* 792 F.2d at 1422 (referring to Commission finding, supported by ''substantial evidence,'' that the accountant ''knowingly participated in the fraud practice by [the issuer] on the investing public''). In any event, *Davy* does not support the Commission's adoption of the Standard, because the Court went to great lengths to limit its holding:

> We do not consider whether cases can arise in which the SEC in Rule 2(e) matters exceeds its proper jurisdictional boundaries. The precise reach of the SEC in these situations has not been defined and we leave that task for a future case which implicates that question directly.

Id.; see also id. (''there may be cases where the SEC should not be empowered to determine the standards by which accountants, or attorneys for that matter, are to be judged''; ''[w]e pretermit any discussion of the SEC's power to determine standards for discipline under Rule 2(e) until we have the issue squarely before us'').

[36] *See, e.g.,* Daley & Karmel, *supra* note 17, 24 Emory L.J. 747; Downing & Miller, *supra* note 17, 54 Notre Dame Law. 774; Freeman, *supra* note 25, 36 Bus. Law. 1791; Johnson, *supra* note 8, 1975 Utah L. Rev. 629; Johnson, *supra* note 8, 25 Mercer L. Rev. 637.

[37] Dennis J. Block & Jonathan M. Hoff, *SEC Moves Against Attorneys Under the Remedies Act,* N.Y.L.J., Sept. 23, 1993, at 5 (quoting Harvey L. Pitt & Dixie L. Johnson, *Justice Delayed, Justice Denied: Observations on the SEC's 'Kern' Decision,* N.Y.L.J., July 11, 1991, at 5).

[38] *See, e.g., Keating,* 47 S.E.C. at 109 (Commissioner Karmel, dissenting); Richard E. Brodsky, P.A., CL 54.

[39] *Keating,* 47 S.E.C. at 112 (1979) (Commissioner Karmel, dissenting); *see also Potts,* 1997 WL 690519 (S.E.C.), at *17 (Commissioner Wallman, dissenting); *David J. Checkosky,* 50 S.E.C. 1180, 1198 (1992) (Commissioner Roberts, concurring in part and dissenting in pertinent part); *Allied Stores Corp.,* 1987 SEC LEXIS 4306, at *19 (June 29, 1987) (Commissioner Fleischman, dissenting); Richard Y. Roberts, CL 18.

It appears that the Rule 102(e) skeptics on the Commission have not always been in the minority. *See Potts,* 1997 WL 690519 (S.E.C.), at *12 (Commissioner Johnson, concurring) (noting that the Commission was ''evenly split two-two'' on the issue of whether a single act of mere negligence was sufficient for liability under Rule 102(e)); *see also Checkosky I,* 23 F.3d at 487 (discussing media reports that, at a preliminary stage, three Commissioners had voted to overturn the '' 'harsh sanction' '' imposed by the Administrative Law Judge); *David J. Checkosky,* 50 S.E.C. at 1182 (denying respondents' ''factual assertion that * * * the Commission had [earlier] rendered a final opinion in this case and improperly refused to publish it'').

[40] *See Keating,* 47 S.E.C. at 112–17 & n.31 (1979) (Commissioner Karmel, dissenting); *see also, e.g., Kivitz* v. *SEC,* 475 F.2d 956, 962 (D.C. Cir. 1973) (reversing Commission finding of liability in Rule 102(e) disbarment case; declining to give Commission any deference in matters of alleged professional misconduct); Judah Best, *supra* note 17, 36 Bus. Law. at 1817; Freeman, *supra* note 25, 36 Bus. Law. at 1792–94; Lorne & Callcott, *supra* note 19, 50 Bus. Law. at 1301–03.

[41] *Cf.* Lorne, *supra* note 17, 76 Mich. L. Rev. at 455–56 (recounting post-*National Student Marketing* incident in which a lawyer, unable to compel disclosure, resigned from his law firm and reported the matter to the SEC; after the disclosure was made, a class action lawsuit followed that was settled upon payment of $785,000, $625,000 of which came from the lawyer's former firm, and only $160,000 from the client).

[42] Lorne & Callcott, *supra* note 19, at 1300–01 (referring to actions against lawyers).

[43] Lorne & Callcott, *supra* note 19, at 1303–04; Pitt & Shapiro, *supra* note 20, 7 Yale J. on Reg. at 174; *see also* Freeman, *supra* note 25, 36 Bus. Law. at 1792.

[44] *William R. Carter,* 47 S.E.C. 471, 511–12 (1981); Lorne & Callcott, *supra* note 19, at 1303–04 (referring to a speech given by the Commission's then-General Counsel: Edward Greene, *Lawyer Disciplinary Proceedings Before the Securities and Exchange Commission,* [1981–1982 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 83,089, at 84,800 (Jan. 13, 1982)). In 1988, the Commission ratified Mr. Greene's speech in a release that stated: ''the Commission, as a matter of policy, generally refrains from using its administrative forum to conduct de novo determinations of professional obligations of attorneys.'' *Disciplinary Proceedings Involving Professionals Appearing or Practicing Before the Commission,* Securities Act Release No. 6783, 53 Fed. Reg. 26,427, 26,431 n.30, 1988 WL

situation was less clear, but, at least for a time, the Commission seemed less aggressive in bringing Rule 102(e) actions against them as well.[45]

In the late 1980's, however, Rule 102(e) actions against accountants became more of a focal point for the Commission.[46] In 1988, the Commission amended Rule 102(e) to create a presumption that disciplinary proceedings would be public rather than private—previously Rule 102(e) proceedings only became public if sanctions were imposed.[47] In addition, as an enforcement adjunct to combat ''financial fraud,'' the Commission stepped up its use of Rule 102(e) to bring charges of ''improper professional conduct'' against the auditors of public companies.[48] It was in this context that the Commission instituted administrative proceedings under Rule 102(e) against two accountants, David J. Checkosky and Norman A. Aldrich.[49]

II. The Checkosky Decisions

Checkosky and Aldrich, partners at one of the nation's preeminent accounting firms, were the engagement partner and audit manager in connection with audits of the Savin Corporation from 1981 to 1984.[50] The Commission brought a Rule 102(e) proceeding against them in 1987, and in 1992 affirmed an ALJ's finding of ''improper professional conduct.'' [51] In its initial opinion, the Commission found that Savin's financial statements were false in that the company improperly capitalized certain expenses for research and development rather than recording them in their entirety as expenses in the years incurred.[52] These violations were based on a finding that the auditors, in violation of Generally Accepted Auditing Standards (''GAAS''), had improperly permitted Savin to capitalize these expenditures and falsely certified that Savin's financial statements set forth its financial condition in accordance with Generally Accepted Accounting Principles (''GAAP'').[53]

Commissioner Roberts concurred in the majority's finding that respondents violated GAAS and misapplied GAAP, but dissented from the finding that these errors amounted to ''improper professional conduct'' under Rule 102(e).[54] In Commissioner Roberts' view, respondents' conduct did not provide a sufficient basis for a finding that they would threaten the Commission's processes.[55]

In *Checkosky I,* the D.C. Circuit remanded the case because it was unable to discern from the Commission's opinion the basis for its action other than the finding that the accountants had violated GAAS and falsely certified that the financial statements set forth the financial condition of the company in accordance with GAAP.[56] There was no opinion of the Court, and each of the three judges (Judge Silberman, Judge Randolph and a district court judge sitting by designation, Judge Reynolds) issued a separate opinion.

Judges Silberman and Randolph both questioned the Commission's ability to impose sanctions under Rule 102(e) for misconduct not rising to the level of scienter, i.e., misconduct that is only negligent.[57] In Judge Randolph's view, the Commission's authority under Rule 2(e) ''must rest on and be derived from the statutes it administers,'' such as Section 10(b) of the Exchange Act that requires scienter.[58] Judge Randolph also extensively discussed a 1981 Commission decision, *William R. Carter,* which he regarded—correctly, in my view—as ''the Commission's most comprehensive discussion of the history, purpose and operation of Rule 2(e),'' that rejected a negligence standard in case involving lawyers.[59] Judge Randolph endorsed the reasoning of *Carter:* ''if a securities lawyer is to exercise his 'best independent judgment * * * he must have the freedom to make innocent—or even, in certain cases, careless—mistakes without fear of [losing] the ability to practice before the Commission.' '' [60] In Judge Randolph's view, the exercise of independent professional judgment was equally crucial to accountants, and this consideration would preclude the Commission from adopting a negligence standard, even if only applicable to accountants, under Rule 102(e).[61]

Judge Silberman likewise questioned the Commission's ability to adopt a negligence standard. For instance, Judge Silberman explained that:

> If the purpose of Rule 2(e) is to protect the integrity of administrative processes, then sanctions for improper professional conduct under 2(e)(1)(ii) are permissible only to the extent that they prevent the disruption of proceedings. Punishment for mere negligence, so the argument goes, extends beyond this realm of protective discipline into general regulatory authority over a professional's work.[62]

Judge Silberman similarly suggested that the Commission could not legitimately adopt a negligence standard under Rule 102(e) because that might amount to ''a de facto substantive regulation of the profession.'' [63] Judge Silberman further indicated that the adoption by the Commission of a negligence standard, given its previous contrary precedent, might be arbitrary and capricious.[64]

On remand, the Commission's majority opinion did not directly address the mental state question posed by the Court.[65] Instead, the majority found that the accountants had behaved recklessly, but at the same time insisted that any deviation from GAAP or GAAS, including purely negligent ones, could violate Rule 102(e), and that the accountants' recklessness was relevant only to the choice of sanctions.[66] I dissented from the Commission's second *Checkosky* opinion because I believed that ''improper professional conduct'' required proof of scienter.[67]

On appeal in *Checkosky II,* the D.C. Circuit again reversed, and scolded the Commission, in scathing terms, for its failure to heed the dictates of *Checkosky I.*[68] The Court found that, the prior remand notwithstanding, the Commission had again failed to offer an adequate explanation of Rule 2(e)(1)(ii), but had ''voic[ed] instead a multiplicity

278442 (F.R.) (July 13, 1988); *see also id.* (referring to Commission practice of generally instituting Rule 102(e) proceedings ''only where the attorney's conduct has already provided the basis for a judicial or administrative order finding a securities law violation in a non-Rule 2(e) proceeding'').

[45] Pitt & Shapiro, *supra* note 20, 7 Yale J. on Reg. at 174.

[46] Goelzer & Wyderko, *supra* note 11, 85 Nw. U.L. Rev. at 653.

[47] Rule 102(e)(7); *see Disciplinary Proceedings Involving Professionals Appearing or Practicing Before the Commission,* Securities Act Release No. 6783, 53 Fed. Reg. 26,427, 1988 WL 278442 (F.R.) (July 13, 1988).

[48] Goelzer, *supra* note 17, 52 Brook. L. Rev. at 1061; *see also infra* note 135.

[49] *David J. Checkosky,* Order Instituting Private Proceedings, File No. 3–6776 (Nov. 12, 1987).

[50] *David J. Checkosky,* 50 S.E.C. 1180, 1180–81 (1992).

[51] 50 S.E.C. at 1180–81.

[52] 50 S.E.C. at 1181.

[53] 50 S.E.C. at 1181.

[54] 50 S.E.C. at 1198 (Commissioner Roberts, concurring in part and dissenting in part).

[55] 50 S.E.C. at 1198 & 1212–14.

[56] 23 F.3rd at 454.

[57] Senior District Judge Reynolds dissented from the circuit judges' conclusion that ''improper professional conduct'' under Rule 102(e) required proof of scienter. 23 F.3d at 493–95.

[58] *See* 23 F.3d at 466 & 468–69.

[59] *See* 23 F.3d at 484; *see also* 23 F.3d at 480–87 (citing *William R. Carter,* 47 S.E.C. 471 (1981)).

[60] 23 F.3d at 484 (ellipsis and brackets in original; quoting *Carter,* 47 S.E.C. at 504).

[61] *See* 23 F.3d at 483–87.

[62] 23 F.3d at 456.

[63] 23 F.3d at 459.

[64] 23 F.3d at 460; *see also* 23 F.3d at 458–59 (referring to *Carter,* 47 S.E.C. 471, and *Kenneth N. Logan,* 10 S.E.C. 982 (1942)).

[65] *David J. Checkosky,* 1997 WL 18303 (S.E.C.) (Jan. 21, 1997).

[66] 1997 WL 18303 (S.E.C.), at *10.

[67] 1997 WL 18303 (S.E.C.), at *14.

[68] *E.g.,* 139 F.3d at 222.

of inconsistent interpretations.'' [69] Because of the Commission's ''persistent failure to explain itself'' and ''the extraordinary duration of these proceedings,'' the Court declined to give the Commission a third chance, and instead invoked the exceedingly rare remedy of remanding the case with instructions to dismiss.[70]

In an opinion truly remarkable for the criticism heaped on the Commission, the Court agreed with respondents' contention that the Commission had again ''failed to articulate an intelligible standard for 'improper professional conduct' under Rule 2(e)(1)(ii).'' [71] The Court noted that not only was the Commission's 1997 opinion unclear, but that, ''[i]n something of a tour de force,'' it managed ''to both embrace and reject standards of (1) recklessness, (2) negligence and (3) strict liability—or so a careful (and intrepid) reader could find.'' [72] The Court also enumerated numerous contradictions between the Commission's opinion and its appellate brief and oral argument.[73] In the Court's view, the Commission's failure to adopt an intelligible negligence standard was so lacking that the Commission had violated ''[e]lementary administrative law norms of fair notice and reasoned decisionmaking.'' [74] Referring to one part of the Commission's 1997 opinion, the Court sarcastically observed ''[i]n the space of four short sentences this passage achieves impressive feats of ambiguity.'' [75] The Court continued on, remarking: ''Not only does the opinion on remand provide no clear mental state standard to govern Rule 2(e)(1)(ii), it seems at times almost deliberately obscurantist on the question.''[76]

In a passage of great portent to today's release, the Court stated that the Commission's instrumental good intentions alone will not suffice:

> However legitimate and, indeed, essential the Commission's concern about unreliable financial statements may be, it is no substitute for a clearly delineated standard. Instead, the Commission's statements come close to a self-proclaimed license to charge and prove improper professional conduct whenever it pleases, constrained only by its own discretion (combined, perhaps, with the standards of GAAS and GAAP).[77]

As in *Checkosky I*, the Court questioned the Commission's ability to adopt a negligence standard under Rule 102(e).[78] The Court appeared to reaffirm its previous statements about the limits of the Commission's authority in disciplining professionals subject to Rule 102(e), remarking that ''adoption of a negligence standard might be *ultra vires*'' because it might amount to ''a back-door expansion of [the Commission's] regulatory oversight powers.'' [79] On this last point, Judge Henderson wrote a two-sentence concurrence to express her disagreement with the majority (Judge Williams, who wrote the opinion, and Chief Judge Edwards).[80]

III. The Commission Lacks the Authority to Promulgate Rule 102(E) or, at the Least, Lacks the Authority To Adopt the Proposed Standard

As a result of this rulemaking process, I have reexamined the Commission's rationale for promulgating Rule 102(e), that is, the rule has a remedial purpose to protect the integrity of the Commission's administrative processes. This reexamination leads me to the conclusion that Rule 102(e) does not have that remedial purpose, rather it is or has become just another weapon in the Commission's enforcement arsenal. Rule 102(e)'s status as an enforcement tool removes the basis relied upon by those few courts that have upheld the Commission's ability even to promulgate Rule 102(e). Furthermore, even assuming the authority to promulgate Rule 102(e) in some form, the Commission may not adopt the negligence standard set forth in today's release.

In addition to rendering a single negligent act, under some circumstances, ''improper professional conduct,'' the other two parts of the Standard create liability for: intentional, knowing or reckless conduct; and a pattern of negligent acts. As the Release correctly notes, most commenters agreed with these parts of the proposal.[81] Assuming the Commission has the authority to promulgate Rule 102(e), I support the intentional or reckless part of the amendment without reservation. As to that part addressing a pattern of negligence, I would generally reach the same result as the majority, but through a different analysis. Assuming adequate authority, the Commission may appropriately bring a charge of ''improper professional conduct'' under Rule 102(e) only if the pattern of negligence supports an inference that the accountant acted recklessly.[82] In any event, because of the natural tendency towards the path of least resistance—towards proving one's case the by the easiest method possible—I think that most of the Rule 102(e) cases brought under the new standard will surely be brought under the single negligent act provision.

A. Rule 102(e) Has Become Another Weapon in the Commission's Enforcement Arsenal

In the Release, the Commission explains its refusal to adopt a scienter standard because ''Rule 102(e) protects the integrity of the Commission's processes; it is not an enforcement remedy or a weapon against fraud.'' [83] The Commission also insists that ''the rule is remedial and not punitive in nature.'' [84] I disagree with the first assertion, and think the second assertion is contrary to controlling law in the D.C. Circuit. Although I have come to the conclusion that Rule 102(e) is overly broad, as a structural matter, I do wish to emphasize my view that the Commission, like any adjudicative body, may legitimately adopt a disciplinary rule designed to redress contemptuous, disruptive or obstructionist behavior by advocates who appear in actual proceedings before us.[85] But Rule 102(e) is not such a permissible rule. I am, of course, aware that several courts have accepted the Commission's professed rationale about the need to protect its administrative

[69] 139 F.3d at 222.

[70] 139 F.3d at 222; *see also id.* at 227.

[71] 139 F.3d at 223.

[72] 139 F.3d at 223.

[73] 139 F.3d at 223–24.

[74] 139 F.3d at 224.

[75] 139 F.3d at 225.

[76] 139 F.3d at 225.

[77] 139 F.3d at 225.

[78] 139 F.3d at 225.

[79] *Id.* (citing *Checkosky I*, 23 F.3d at 459 (Silberman, J.)).

[80] 139 F.3d at 227. Unlike the majority, Judge Henderson apparently believed that the Commission did have the authority to adopt a negligence standard under Rule 102(e). *Id.* (the Commission, like every regulatory body, ''possesses—and must possess—authority to maintain the professional standards of its practitioners'').

[81] *See* Release at 3, 15 & 26.

[82] *Compare Potts*, 1997 WL 690519 (S.E.C.), at *12 & n.1 (Commissioner Johnson, concurring) *with Potts*, 1997 WL 690519 (S.E.C.), at *17 (Commissioner Wallman, dissenting).

[83] Release at 31; *see also id.* at 7–8.

[84] Release at 11 & n.26; *see also id.* at 6 & 23.

[85] Many of the abuses of Rule 102(e) stem from the all-encompassing way in which the Commission has defined ''practice before'' us to include, at least at an earlier time, not only appearances before us and the staff, and filings made with us, but also office work by professionals directly related to the federal securities laws. *See* Robert J. Haft, *Liability of Attorneys and Accountants for Securities Transactions* ¶ 8.01[2], at 8–3 (1997); *see also Richard D. Hodgin*, 49 S.E.C. 8, 10 (1979); *SEC* v. *Ezrine*, Litigation Release No. 6481, 1974 WL 13435 (S.E.C.) (Aug. 15, 1974). In addition, partners of a disqualified professional may not permit the sanctioned person to participate in Commission matters, to participate in profits from their Commission business, or to hold him or her out as entitled to practice before the Commission. Haft, *supra*, at 8–3 to 8–4. Finally, partners and associates of a disqualified firm may not practice before the Commission as long as they remain associated with the firm, even if they joined the firm after the disqualification. *Id.* at 8–4.

processes.[86] In my view, however, today's amendment—combined with the Commission's recently announced crackdown on improper accounting practices, as well as recent judicial developments—provides an ample basis for a critical reexamination of these precedents.

In *Touche Ross,* which was decided in 1979, the Commission successfully argued to the Second Circuit that Rule 102(e) was necessary to protect the integrity of its administrative processes.[87] The Commission has consistently relied on the same rationale since then, which is repeated in today's release.[88] Before the press of litigation arose, however, the Commission could be more candid. In a speech published in 1974 discussing ''spectacular recent failures'' such as the collapse of National Student Market Corporation, then-Chairman Ray Garrett made the following statement:

> We are not entirely happy with the means at our disposal to cause higher standards of professional conduct for investor protection. It is true that we can legislate rules governing the contents of financial statements filed with the Commission, but that won't insure a careful audit, and it certainly won't improve standards of professional conduct by lawyers. *Our tools in this context,* aside from informal comment and criticism, *are enforcement weapons—suspension or disbarment from practicing before the Commission, under Rule 2(e) of our Rules of Practice,* and an action for an injunction on the ground that the accountant or lawyer has participated in or aided and abetted a violation of the securities laws, including Rule 10b–5.[89]

Former Chairman Garrett's remarks support the assertion of one commenter, a former Commission enforcement attorney who played a leading role in prosecuting *Carter* and other Rule 102(e) cases during the 1970's, that protection of the Commission's processes is merely a ''convenient legal fiction'' or ''shibboleth [the Commission] used to win the *Touche Ross*[] case twenty years ago.''[90] This commenter also points out that, as a practical matter, the Commission's staff approaches Rule 102(e) proceedings in the same manner as other enforcement cases, such that charges under Rule 102(e) are just another enforcement alternative.[91] This practical approach will often suit the convenience of potential respondents who may well prefer an administrative settlement of Rule 102(e) charges to other enforcement alternatives (e.g., a federal court injunctive action, in which the Commission would likely seek monetary penalties).[92]

The Commission's use of Rule 102(e) has not changed since 1974—it remains an ''enforcement weapon.'' Under usual procedures, the Commission's Division of Enforcement investigates cases, and, in the case of a financial fraud involving a public company, will routinely scrutinize the conduct of the responsible accountants.[93] If the Division of Enforcement determines that the accountant's conduct is substandard, the Division of Enforcement will consult with the Commission's Office of the Chief Accountant, and then make an enforcement recommendation to the Commission.[94] If the Commission authorizes the case as an administrative proceeding under Rule 102(e), the Division of Enforcement prosecutes it in the name of the Office of the Chief Accountant.[95] As should be apparent from these procedures, notwithstanding surface appearances, Rule 102(e) is much more than a mere disciplinary rule.[96] If Rule 102(e) were just a disciplinary rule, one would expect that the Commission's use of it would parallel other administrative agencies' use of their respective disciplinary rules—surely the Commission's processes need no greater protection than those of, for instance, the Federal Trade Commission or the Nuclear Regulatory Commission. But the opposite is true. Reflecting the enforcement nature of Rule 102(e), one academic has calculated that, over a 50-year period, the Commission has disbarred or suspended more lawyers than ''nearly all other federal agencies combined.''[97] Were accountants included in this tabulation, I am sure the numbers would demonstrate an even greater disparity.

These arguments that the Commission lacks the authority even to promulgate Rule 102(e) are not new. In fact, Commissioner Karmel, in a series of dissents starting almost 20 years ago, made many of the same points I make today.[98] For instance, Commissioner Karmel began her best-known dissent as follows:

> This is another Rule 2(e) disciplinary proceeding which arises from the Commission's efforts to protect investors by articulating and enforcing professional responsibility standards for attorneys. The Commission's authority to promulgate Rule 2(e) is tenuous at best. Since the Commission's program is in aid of its prosecutorial function, rather than its rule making or adjudicatory functions, I view it as an invalid exercise of power * * *.[99]

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[86] *See Sheldon* v. *SEC,* 45 F.3d 1515, 1518 (11th Cir. 1995); *Davy,* 792 F.2d at 1421; *Touche Ross,* 609 F.2d at 582.

[87] 609 F.2d at 579.

[88] Release at 7–8.

[89] Ray Garrett, Jr., *New Directions in Professional Responsibility,* 29 Bus. Law. 7, 11 (1974) (emphasis added); *see also id.* at 9 (referring to stockholders of National Student Marketing losing ''in excess of $400 million in 3 months''). In *Touche Ross,* the Second Circuit purported to find support for the proposition that the Commission did not use Rule 102(e) as ''an additional weapon in the its enforcement arsenal'' in a Commission release that predated Chairman Garrett's remarks. *See* 609 F.2d at 579 (citing Securities Act Release No. 5088 at 1, 1970 SEC LEXIS 645 (Sept. 24, 1970)). This release, however, supports the *Touche Ross* citation, if at all, only in the most general sense.

[90] Richard E. Brodsky, P.A., CL 54, at 1 n.2 & 4. Mr. Brodsky candidly admits that he has ''represented numerous accounting firms in SEC investigations'' since leaving the Commission in 1981. *Id.* at 1 n.2.

[91] Richard E. Brodsky, P.A., CL at 6.

[92] *Id.; see also* Judah Best, *supra* note 17, 36 Bus. Law. at 1815 (from perspective of defense counsel, Rule 102(e) ''is a great settlement device''—''a means of avoiding the necessity of an injunction if you can bargain successfully for it'').

[93] *See* Ferrara, *supra* note 17, 36 Bus. Law. at 1807–09.

[94] *Id.;* Coppolino, Note, *supra* note 17, 63 Fordham L. Rev. at 2232.

[95] *Id.: see SEC Announces Organizational Changes as to Accountants, Consumer Affairs,* 1193 Daily Exec. Rep. (BNA) No. 236, at d–3 (Dec. 10, 1993). For lawyers, our Office of the General Counsel takes the place of the Division of Enforcement in recommending and prosecuting Rule 102(e) cases. *Id.*

[96] Many commenters have observed that the Commission's aggressive use of Rule 102(e) goes well beyond other agencies' use of comparable disciplinary rules (with the possible exception of the Office of Thrift Supervision, which intentionally modelled its disciplinary rule on Rule 102(e)). *See, e.g.,* ABA, CL 81 at 3–4; *see also* Ted Schneyer, *A Tale of Four Systems: Reflections on How Law Influences the ''Ethical Infrastructure'' of Law Firms,* 39 S. Tex. L. Rev. 245, 263 (1998) (''Over the years, the Securities and Exchange Commission (SEC) and, more recently, the Office of Thrift Supervision (OTS) have asserted far-reaching authority to directly regulate lawyers who practice in their fields, much as judges regulate trial lawyers.''); Ted Schneyer, *Professional Discipline for Law Firms?,* 77 Cornell L. Rev. 1, 43–44 (1991) (under Rule 102(e), SEC has been the ''most aggressive agency'' in disciplining lawyers). In addition, the Commission's use of Rule 102(e) goes well beyond standards used to enforce the disciplinary rules of most courts. *See* ABA CL 81, at 3–4; AICPA, CL 84 at 12.

[97] Emerson, *supra* note 17, 29 Am. Bus. L.J. at 178.

[98] *Keating,* 47 S.E.C. at 111 (Commissioner Karmel, dissenting); *see also, e.g., Darrel L. Nielsen,* 49 S.E.C. 50, 51 (1980) (Commissioner Karmel, dissenting); *Bernard J. Coven,* 49 S.E.C. 46, 47 (1979) (Commissioner Karmel, dissenting); *Hodgin,* 49 S.E.C. at 11 (Commissioner Karmel, dissenting).

[99] *Keating,* 47 S.E.C. at 109; *see also id.* at 111 (expressing disapproval of use of Rule 2(e) as ''a general enforcement tool to discipline attorneys''). Though Commission Karmel questioned most strongly the Commission's authority to regulate the conduct of attorneys, she questioned the Commission's authority to regulate the conduct of accountants as well. *See id.* at 111 & 115 n.31; *see also Nielsen,* 49 S.E.C. at 52–54 (Commissioner Karmel, dissenting).

The force of Commissioner Karmel's arguments have increased, rather than diminished with time.[100]

Starting with the Second Circuit's decision in *Touche Ross*,[101] the few courts to consider these arguments have rejected them, but I think there is ample cause for reconsideration. As the Release repeatedly recognizes, the legitimacy of Rule 102(e) depends on it having a remedial purpose.[102] A recent decision by the D.C. Circuit, *Johnson* v. *SEC*,[103] however, and the Commission's response to it, place the characterization of Rule 102(e) as ''remedial'' in great doubt. In *Johnson*, the D.C. Circuit rejected the Commission's argument that sanctions imposed on a branch manager at a registered broker-dealer, a censure and a six-month suspension, were ''remedial''; rather the Court determined that these sanctions fell within the definition of ''penalty'' for purposes of the statute of limitations.[104] Precisely these same sanctions, censure and suspension, are among the sanctions frequently imposed by the Commission in Rule 102(e) cases. Under the reasoning of *Johnson*, the punitive nature of Rule 102(e)'s sanctions could well give rise to questions about the Commission's ability to promulgate it. The D.C. Circuit decided *Johnson* after *Checkosky I*, but before *Checkosky II*.[105] In *Checkosky II*, the D.C. Circuit determined that the Commission had failed to comply with the directions in *Checkosky I* that it clearly enunciate its standard for Rule 102(e), and thus had no need to determine whether, as a result of *Johnson*, the Commission still had the authority to promulgate Rule 102(e).

Subsequent action by the Commission indicate its own recognition that this argument may be well-founded. In *Angelo P. Danna, CPA*, two accountants filed a motion to dismiss a Rule 102(e) proceeding as one seeking a penalty and thus time-barred under *Johnson*.[106] The Division of Enforcement failed to object, and the Commission dismissed the proceeding.[107] Likewise, in *George Craig Stayner, CPA*, the Commission dismissed a Rule 102(e) case against an accountant who had raised the *Johnson* issue, this time over the objection of the Office of the Chief Accountant.[108] In several analogous disciplinary cases not involving Rule 102(e), the Commission has ordered dismissals, without objections from the staff, in response to similar arguments relying on *Johnson*.[109] Given the time and resources the Commission devoted to *Danna* and *Stayner*, one would have thought the Commission would have declined to dismiss these cases if it had any confidence in its chances on the ''punitive''/''remedial'' question in the D.C. Circuit.

In my view, the purpose of Rule 102(e) is not to protect the Commission's administrative processes, but rather to enforce compliance with the federal securities laws. In addition, under controlling law in the D.C. Circuit, Rule 102(e) is punitive, not remedial. As a result, the Commission lacks the authority even to promulgate Rule 102(e).

B. The Commission Lacks the Authority To Adopt a Negligence Standard

Even assuming the Commission could validly promulgate Rule 102(e), it lacks the authority to adopt a negligence standard. In my view, this conclusion is compelled by the D.C. Circuit's decisions in *Checkosky I* and *Checkosky II*.[110] Others at the Commission question my interpretation of both *Checkosky* cases, but I note that this same urge to construe an adverse decision as narrowly as possible (sometimes even more narrowly than possible) is precisely what so enraged the D.C. Circuit in *Checkosky II*.[111]

I must confess that I remain somewhat mystified by the begrudging attitude towards *Checkosky* that is prevalent at the Commission. After two of the worst defeats in the Commission's 60-plus year history, we should not adopt merely the absolute minimum necessary to pass muster in the D.C. Circuit. Rather, we should strive toward caution and conservatism, and give ourselves an ample margin for error. The Standard is not cautious; it is not conservative. Instead, the Commission has again reverted to a ''push the envelope'' strategy, and thrown down the gauntlet to the D.C. Circuit.

Editorializing aside, I believe that the Commission lacks the authority to adopt a negligence standard under Rule 102(e). No appellate court has approved the Commission's adoption of a negligence standard, and I fully concur with the ABA's statement that ''the prognosis for appellate court affirmance of * * * a [negligence-based] standard is very poor.''[112] Of course, the Release denies that what the Commission has adopted is a ''simple'' or ''mere'' negligence standard.[113] But the Proposing Release contained similar

[100] The academic commentary largely supports the view that Rule 102(e) is ''just part of the SEC's disciplinary enforcement arsenal.'' Emerson, *supra* note 17, 29 Am. Bus. L.J. at 167; *see generally supra* note 17.

[101] 609 F.2d 570. In one of the many ironies surrounding Rule 102(e), the opinion in *Touche Ross* was written by Judge Timbers. Before Judge Timbers' distinguished service as a federal judge, he served with distinction as the Commission's General Counsel in the mid-1950's. At that time, the General Counsel had supervisory responsibility for overseeing all the Commission's Rule 102(e) cases.

[102] Release at 7, 11 & n.26, 19 & 31.

[103] 87 F.3d 484 (D.C. Cir. 1996). At the time *Johnson* was decided, I disagreed with its reasoning, and supported the Commission's unsuccessful efforts to seek Supreme Court review. Regardless of my earlier disagreement with *Johnson* and my support of continuing efforts to raise this issue in other circuits, *Johnson* represents controlling law in the D.C. Circuit and will almost certainly be a factor the next time the D.C. Circuit reviews Rule 102(e).

[104] 87 F.3d at 485–87 (construing 28 U.S.C. 2462).

[105] Because *Johnson* came after *Checkosky I*, I regard the statements of Judges Silberman and Randolph supporting the Commission's ability to promulgate Rule 102(e) as less than authoritative. *See* 23 F.3d at 455 (Silberman, J.) & 472 (Randolph, J.). Because there was no opinion of the Court in *Checkosky I*, the D.C. Circuit probably need not invoke *en banc* procedures in its next review of Rule 102(e) to determine whether to follow the Second Circuit's decision in *Touche Ross*. Any panel of the D.C. Circuit would have the power to decide to follow or not to follow *Touche Ross*.

[106] Exchange Act Release No. 38499, 1997 WL 197555 (S.E.C.) (April 14, 1997). These respondents had earlier sought to enjoin the Commission in federal court from commencing the Rule 102(e) proceedings; in an unpublished decision (relied on in the Release at 18 & 29), the district court held that the Commission's Rule 102(e) authority is not limited to instances of intentional misconduct or bad faith. *See Danna* v. *SEC*, 1994 WL 315877 (N.D. Cal. Feb. 8, 1994).

[107] 1997 WL 197555 (S.E.C.).

[108] Exchange Act Release No. 39994, 1998 SEC LEXIS 956 (May 14, 1998).

[109] *See, e.g., Paul C. Kettler*, Exchange Act Release No. 40011, 1998 SEC LEXIS 986 (May 20, 1998); *Richard M. Kulak*, Exchange Act Release No. 38657, 1997 SEC LEXIS 1113 (May 20, 1997).

[110] *See supra* Section II.

[111] A respected securities scholar, Dean Joel Seligman of the University of Arizona College of Law, submitted a comment letter opining that, although ''there is some uncertainty'' because of the *Checkosky* decisions, the Commission has the authority under the federal securities laws to adopt a negligence standard for Rule 102(e). *See* CL 53 at 2. Dean Seligman qualified his endorsement in other important ways—even he expressed concerns about the clarity of the June proposal. *See* CL 53 at 3. Dean Seligman's opinion is contrary to the clear weight of academic commentary. *See, e.g.*, Downing & Miller, *supra* note 17, 54 Notre Dame Law. at 775–81; Maxey, *supra* note 12, 22 Del. J. Corp. L. at 563–64; Flagel, Note, *supra* note 17, 20 Dayton L. Rev. at 1095–98; *see also supra* note 17. In addition, most other commenters share my view that the *Checkosky* opinions appear to preclude the Commission from adopting a negligence standard. *See* ABA, CL 81 at 3; Robert K. Elliott, Partner, KPMG Peat Marwick LLP (''KPMG Peat Marwick''), CL 82 at 2–3; AICPA, CL 84 at 4–5 & 10–15; *see also, e.g.*, Don Hummel, Administrative Director, Department of Commerce and Insurance, Tennessee State Board of Accountancy, CL 12; Richard Y. Roberts, CL 18.

[112] ABA, CL 81 at 3. *Cf. Checkosky I*, 23 F.3d at 456 (Silberman, J.) (courts of appeals have not ''squarely addressed'' question of Commission's authority to adopt a negligence standard under Rule 102(e)). Although the Eleventh Circuit's subsequent opinion in *Sheldon*, 45 F.3d at 1518, discussed generally the Commission's authority to promulgate Rule 102(e), it did not address the negligence question.

[113] Release at 30.

unconvincing attempts to narrow what seemingly was an all-encompassing standard.[114] Interested parties submitted over 150 comment letters, more than half (by my estimate) expressing skepticism or worse as to whether the standard in the Proposing Release truly limited the Commission's discretion to bring Rule 102(e) cases for simple negligence. Though insisting that it has the authority to adopt a ''simple'' or ''mere'' negligence standard, the Commission now purports to adopt a higher standard.[115] I think that the Standard will not limit the Commission's discretion to bring cases for simple negligence. Moreover, as I discuss in the next section, the revisions to the Proposing Release's standard only add to the lack of clarity surrounding this issue.

As an initial matter, it is important to recognize that today's release actually *expands* the Commission's Rule 102(e) jurisdiction beyond that encompassed by the Proposing Release. The single negligent act provision in the Proposing Release contained a requirement that the act be tied to ''making a document prepared pursuant to the federal securities laws materially misleading.'' [116] The single negligent act provision in the Standard omits this requirement, thereby increasing substantially the potential reach of Rule 102(e).[117]

The Standard does contain two elements which form the basis for the Commission's claim that it adopts ''an intermediate standard, higher than ordinary negligence but lower than the traditional definition of [Rule 10b–5] recklessness.'' [118] These elements are that the alleged misconduct: (1) Must be ''highly unreasonable,'' not merely ''unreasonable,'' as in the Proposing Release; and (2) must occur under ''circumstances in which an accountant knows, or should know, that heightened scrutiny is warranted.'' [119] On close examination, these elements present only illusory limits on the Commission's discretion to bring charges of ''improper professional conduct'' based on a single act of negligence.

Unlike ''highly unreasonable conduct,'' the Proposing Release discussed the concept of ''heightened scrutiny,'' and, accordingly, interested parties had the opportunity to explain its drawbacks. The AICPA objected to any attempt by the Commission to

> use Rule 102(e) proceedings to determine in the first instance the circumstances under which particular items of financial statements require ''heightened scrutiny.'' In our view, auditors should determine which items require increased scrutiny according to existing professional guidance, not because they fear the Commission will, in hindsight, so conclude. Determinations announced retrospectively by an Administrative Law Judge or the Commission would make Rule 102(e) a vehicle for improper back-door regulation through the adjudicatory announcement of standards.[120]

I fully endorse these views.

Furthermore, I think the Commission's use of ''heightened scrutiny'' is merely a form of materiality that will have no practical effect on limiting the Commission's ability to bring cases for simple negligence. One would think that the Commission would have limited interest in bringing Rule 102(e) cases for alleged misconduct that involved only immaterial matters, but the Release tells us otherwise.[121] The Release asserts that the Commission need not show either actual harm or materiality under Rule 102(e) because:

> An auditor who fails to audit properly under GAAS—whether recklessly or highly unreasonably—should not be shielded because the audited financial statements fortuitously turn out to be accurate or not materially misleading.[122]

I am troubled by this statement. The ''heightened scrutiny'' element is based in considerations of materiality, yet the Release disclaims any need for the Commission to prove materiality. This is but one of the many contradictions and ambiguities raised by the Standard. As in *Checkosky*, the Commission refuses to recognize any meaningful limitations on its discretion to bring cases under Rule 102(e).

Likewise, the other added requirement—that the Commission prove that the single negligent act was ''highly unreasonable,'' rather than simply ''unreasonable''—also fails to place any significant limitations on the Commission's discretion under Rule 102(e). In my view, this distinction amounts to no more than legal hair-splitting. It seems that ''highly unreasonable conduct'' was chosen precisely for its lack of content: it is an empty vessel that gives virtually no guidance to the accounting profession or reviewing courts and into which the Commission can pour whatever content it deems fit, contrary to the dictates of *Checkosky*.[123]

One person's ''unreasonable'' act might well be another person's ''highly unreasonable'' act. Since the Commission has a well-deserved reputation for aggressiveness in its interpretation of Rule 102(e), it seems likely that what it considers ''highly unreasonable'' may not appear to others even to be ''unreasonable'' at all.[124] I cannot imagine a single case that the Commission would have wanted to bring under the standard in the Proposing Release that it could not also bring under the Standard. The revisions from the standard in the Proposing Release amount to mere window dressing, having more to do with assisting the Commission's litigation posture than with giving proper deference to the good faith judgment calls of accountants.

In attempting to justify the standard, the Commission treads on thin ice. The Release asserts that: ''The Commission believes that a negligent auditor can do just as much harm to the Commission's processes as one who acts with an improper motive.'' [125] This is the very same Commission argument two judges of the D.C. Circuit rejected in *Checkosky I*. Judge Randolph recognized that the Commission had made this same argument in *Hochfelder* as support for not requiring scienter under Rule 10b–5, and the Supreme Court had there rejected '' 'this effect-oriented approach' '' as one that would logically result in absolute liability whenever investors suffered harm.[126] Similarly, Judge Silberman also questioned this argument, observing that the Commission's no-fault

> language, tellingly, suggests that the Commission's reasons for considering an auditor's negligence to be 'improper professional conduct' ha[ve] more to do with protecting the public than the Commission's administrative processes.[127]

[114] Proposing Release, 1998 WL 311988 (S.E.C.), at *4.

[115] Release at 30.

[116] Proposing Release, 1998 WL 311988 (S.E.C.), at *3.

[117] *See supra* note 85 and accompanying text.

[118] Release at 18.

[119] Release at 14.

[120] AICPA, CL 84 at 14 (footnotes omitted).

[121] Release at 24–25.

[122] Release at 25.

[123] *See Checkosky I*, 23 F.3d at 462 (Silberman, J.); *see also Checkosky II*, 139 F.3d at 224–25.

[124] *See Kivitz* v. *SEC*, 475 F.2d at 962 (D.C. Circuit reversed Commission's finding of liability in Rule 102(e) disbarment case for lack of substantial evidence; declining to give Commission any deference on issues of alleged professional misconduct); *see also, e.g., Checkosky I*, 23 F.3d at 482 n.17 (Randolph, J.) (expressing ''serious doubt'' whether the evidence supported the Commission's recklessness finding; noting contradiction between Commission's opinion and Commission's position at oral argument).

[125] Release at 17; *see also id.* at 10 & 11.

[126] 23 F.3d at 483 (quoting *Hochfelder*, 425 U.S. at 198).

[127] 23 F.3d at 459 & n.7. Although toned down, the Release still contains multiple references to investor protection as a valid rationale for Rule 102(e) proceedings which seem questionable in

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Notwithstanding the harsh scolding received in *Checkosky II*, the Commission seems bound and determined to repeat its past mistakes.

The Standard exceeds the Commission's authority in several ways. It improperly gives the Commission de facto substantive regulatory authority over the accounting profession, and it arrogates to the Commission authority to enforce the securities laws that is reserved to the federal courts. Accountants, like attorneys, are members of ''ancient professions,'' regulated according to rigorous ethical rules enforced by professional societies and state licensing boards. I simply do not believe that we should recast negligent violations of an accounting standard as improper professional conduct under the Commission's Rules of Practice. That is not an appropriate role for the Commission. Difficult ethical and professional responsibility concerns are generally matters most appropriately dealt with by professional organizations or, in certain cases, malpractice litigation. Nor do I believe that mere misjudgments or negligence establishes either professional incompetence warranting Commission disciplinary action or the likelihood of future danger to the Commission's processes.

The comment letters overwhelmingly echo these thoughts.[128] One commenter asserted that the Commission is improperly expanding its authority over matters properly left to the states and the AICPA:

> The Commission's sole legitimate goal with respect to Rule 102(e), absent any express statutory authority to punish professionals for misconduct, is to regulate the conduct of practice before it, not to serve as the ''first line of defense'' against violations of professionals standards more generally.[129]

Another commenter remarked that adoption of a negligence standard would ''constitute an illegitimate expansion of the Commission's regulatory powers.'' [130]

Today's release claims that: ''The Commission does not seek to use Rule 102(e)(1)(ii) to establish new standards for the accounting profession.'' [131] I disagree. The Commission is being too modest in protesting that it does not set substantive ethical standards.[132] In the past—pre-*Checkosky I*, of course, the Commission boasted about its instrumental uses of Rule 102(e) litigation to set ethical standards for both lawyers and accountants. In *Carter*, the Commission reversed sanctions an ALJ had imposed on two lawyers because of the recognition that the Commission itself had not ''firmly and unambiguously established'' the relevant ''ethical and professional responsibilities.'' [133] The length of the Commission's 43-page opinion in *Carter* largely resulted from the Commission's attempts to articulate the relevant Rule 102(e) standards in exhaustive detail.[134]

The Commission has also used Rule 102(e), at the very least, to explain the application of professional standards for accountants, as reflected in a 1991 article co-written by a former Commission General Counsel and the then-Assistant General Counsel who supervised litigation of all Rule 2(e) cases, which stated as fact that:

> the Commission frequently uses Rule 2(e) proceedings as a forum for explaining its views concerning the professional standards applicable to accountants. Indeed, *the Commission's guidance to accountants on particular facets of the audit function is often more extensive than that issued by the profession's standard-setting bodies.*[135]

These observations also seem to describe accurately the likely effects of the Commission's present rulemaking. Many commenters pointed out that the standard in the Proposing Release went well beyond those promulgated by most state accountancy boards.[136] Even assuming that the revisions reflected in the Standard have substance, which I doubt, most state standards contain a ''good faith'' element that the Release expressly rejects.[137] Therefore, the amendment has the potential to cause a fundamental change in the way accountants approach their duties. As occurred during the *National Student Marketing* and *Arthur Young* era, I think accountants may well be forcibly conscripted into following the staff's views because of well-grounded fears that otherwise they may face Rule 102(e) sanctions.[138]

IV. The Proposed Standard Is Unclear

One of the few things regarding Rule 102(e) on which my colleagues and I agree is that, as a result of the *Checkosky* opinions, the Commission has the obligation to set forth clear standards.[139] In my view, the most important part of the Standard—that rendering an accountant's single act of negligence actionable under Rule 102(e)—fails to comply with the directions of the D.C. Circuit in *Checkosky*. I think today's release introduces new flaws that were not contained in the Proposing Release. In June, I severely criticized the earlier standard on the jurisdictional and policy grounds, but I did not claim that it was unclear.[140] On the contrary, as I interpreted it, the Commission sought to adopt a simple negligence standard. The Proposing Release went to some pains to deny that the standard it contained amounted to mere negligence, but I was not convinced. In fact, the ambiguity and lack of clarity in the Proposing Release largely resulted from the Commission's unpersuasive attempts to explain why the earlier standard did not amount to simple negligence.

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light of Judge Silberman's observation. *See* Release at 9 (''Investors have come to rely on the accuracy of the financial statements of public companies when making investment decisions.''); *see also id.* at 5, 9–10 & 22.

[128] *E.g.*, Peter D. Rothman, Volt Information Sciences, Inc., CL 28; John Sommerer, CPA, CL 46; Richard Dillon, CL 86; Robert A. Boyd, CPA, CL 126; Robert J. Sonnelitter, Jr., Director, Accounting and Auditing, Reminick, Aarons & Co., LLP, CL 128; Frank H. Brod, CPA, CL 137; Bull and Associates, Austin, Texas, CL 143; Kyle E. Carrick, CPA, Senior Financial Analyst, International Accounting, The SABRE Group (''SABRE''), CL 144.

[129] Wayne A. Kolins, National Director of Accounting and Auditing, BDO Seidman, LLP (''BDO Seidman''), CL 80 at 3; *see* AICPA, CL 84 at 5.

[130] Steven A. Templeton, Templeton & Company, P.A., CPAs, CL 24.

[131] Release at 13; *see also id.* at 21.

[132] *See, e.g.*, Susan P. Koniak, *When Courts Refuse to Frame the Law and Others Frame It to Their Will*, 66 S. Cal. L. Rev. 1075, 1087 n.50 (1993) (''The SEC has used rule 2(e) proceedings to announce standards of conduct applicable to the legal profession.'').

[133] 47 S.E.C. at 508 (''We also recognize that the Commission has never articulated or endorsed [the relevant] standards.'').

[134] 47 S.E.C. at 508 (''[T]he Commission is hereby giving notice of its interpretation of 'unethical or improper professional conduct' as that term is used in Rule 2(e)(1)(ii).'').

[135] Goelzer & Wyderko, *supra* note 11, 85 Nw. U. L. Rev. at 666 (emphasis added). To the same effect, this article also asserted:

> Rule 2(e) affords the Commission a vehicle to engage, to a limited degree, in professional standard-setting. Through its opinions and orders in these proceedings, the Commission articulates what it deems to be improper or unprofessional conduct in particular factual situations. For example, because of the concentration during the last decade of the Commission's enforcement program on ''financial fraud,'' the use of Rule 2(e) against auditors of public companies has increased. This, in turn, has created an important body of Commission case law on auditor's responsibilities * * *.

Id. at 653.

[136] *See* AICPA, CL 84, at 25–26; *see generally, e.g.*, Paul Seitz (attached to comment letter of Dennis Paul Spackman, CPA, CL 15); John Sommerer, CPA, CL 46; Robert Sonnelitter, CL 128: Frank H. Brod, CPA, CL 137.

[137] *Id.*; Release at 32–33.

[138] *See, e.g.*, Downing & Miller, *supra* note 17, 54 Notre Dame Law. at 786 (suggesting that objective for Rule 102(e) might be to ''subjugate the accounting profession to the Commission's day-to-day control''); Francis M. Wheat, *SEC* v. *Bar—''Fear'' is the Name of the Game*, N.Y*L.J., Aug. 16, 1978, at 1, col. 2.

[139] *See* Release at 2.

[140] Proposing Release, 1998 WL 311988 (S.E.C.), at *9 (Commissioner Johnson, dissenting).

Now, in response to a tidal wave of comment letters complaining about the Commission's lack of authority to adopt a negligence standard, the Commission purports to adopt ''an intermediate standard, higher than ordinary negligence but lower than the traditional definition of [Rule 10b–5] recklessness.'' [141] Even if this description were accurate—and I do not agree that it is—it only serves to emphasize the lack of clarity in the Standard.

At first blush, one might think that the Standard is based in recklessness. After all, the term ''highly unreasonable'' is part of traditional definitions of ''recklessness.''[142] However, the Release correctly insists that the Standard is not a recklessness standard.[143] If, as the Release claims, the Standard is an intermediate standard, the next logical choice would be ''gross negligence.'' Again, however, the Release is at some pains to disclaim that its standard amounts to gross negligence. In a footnote, the Release explains that ''[t]he Commission is not adopting a 'gross negligence' standard because courts have not interpreted the term uniformly.'' [144] I disagree. I think that the majority view tends to equate ''gross negligence'' with ''recklessness,'' as stated by the leading American torts authority, Prosser and Keeton:

> ''reckless'' conduct tends to take on the aspect of highly unreasonable conduct, involving an extreme departure from the standards of ordinary care, in a situation where a high degree of danger is apparent. *As a result there is often no clear distinction at all between such conduct [i.e., ''recklessness''] and ''gross'' negligence, and the two have tended to merge and take on the same meaning,* of an aggravated form of negligence * * * . It is at least clear, however, that such aggravated negligence must be more than any mere mistake * * *, and more than mere thoughtlessness or inadvertence, or simple inattention, * * * or even of an intentional omission to perform a statutory duty.[145]

In any event, ''gross negligence'' itself is a highly unclear term that Prosser and Keeton, among others, disfavor.[146] Thus, the Commission has rejected as unclear a ''gross negligence'' standard in favor of a standard that is even more unclear (and unlike ''gross negligence'' and ''recklessness'' has no currency among courts, lawyers or accountants).

One thing is clear, however, and that is the Commission intends its new Rule 102(e) standard to reach conduct that would not amount to ''recklessness'' or ''gross negligence'' under the Prosser and Keeton definition.[147] If the Commission's standard is not ''recklessness'' or ''gross negligence,'' as those terms have been traditionally defined, well then what is it? The logical answer would seem to be simple negligence, but the Release expressly disclaims that alternative as well.[148] As stated in the preceding section, however, it seems that the Standard will amount to simple negligence, though the Release does contain disguised hints of an intent to apply a strict liability standard in some areas as well.[149]

The Release's equivocal, simultaneous embrace and rejection of recklessness, gross negligence, negligence and strict liability seem familiar, with good reason. The Commission employed exactly the same strategy in *Checkosky*—the Release represents yet another ''tour de force'' by the Commission.[150] Again, the Commission has the best of intentions in its efforts to improve accounting standards, but, as the D.C. Circuit has told us, good intentions alone cannot make up for deficiencies in ''[e]lementary administrative law norms of fair notice and reasoned decisionmaking.'' [151]

With the Standard, the Commission attempts to have it both ways. Because the *Checkosky* decisions raised questions about its authority, the Commission purports to adopt something more than the simple negligence standard contained in the Proposing Release (which the Proposing Release denied was a simple negligence standard). In attempting to finesse the issue of its authority, however, the Commission has sacrificed clarity. With due recognition to the dedication, hard work and long hours put in by the Commission's staff, the Standard and the Release are convoluted and incomprehensible—they have been written by committee and point in varying and conflicting directions. The Standard does not meet the requirements of due process and will not give accountants adequate guidance as to what the Commission may allege, in hindsight, to have been ''improper professional conduct.''

V. The Proposed Standard Is Not in the Public Interest

As explained above, the Commission lacks the legal authority to adopt the Standard and the standard is itself unclear, contrary to what was demanded of the Commission in the *Checkosky* opinions. Even apart from these fatal flaws, strong public policy considerations also call for rejection of the Standard: (a) The Standard is arbitrary and capricious in failing to explain why accountants should be singled out for discriminatory treatment; (b) the Standard will interfere with the ability and willingness of accountants to exercise independent professional judgment; (c) the costs of the Standard will exceed its benefits; and (d) the Standard will unfairly disadvantage small accounting firms. s

A. The Standard Is Arbitrary and Capricious in Singling Out Accountants for Discriminatory Treatment

By my rough count, about half of the comment letters specifically complained that the standard in the Proposing Release discriminated against accountants.[152] The basis for this assertion is simple and compelling—the Commission applies a scienter standard in Rule 102(e) proceedings against lawyers, and the standard in the Proposing Release would have allowed the Commission, without adequate justification, to impose sanctions on accountants for much less egregious conduct.[153] Several commenters also correctly pointed out that the standard in the Proposing Release would allow

[141] Release at 18.

[142] *See* Sundstrand Corp. v. Sun Chemical Corp., 553 F.2d 1033, 1045 (7th Cir. 1977) (defining recklessness as '' 'highly unreasonable' '' conduct involving '' 'an extreme departure from the standards of ordinary care' ''); *See also, e.g., Mansbach* v. *Prescott*, Ball & Turben, 598 F.2d 1017, 1025 (6th Cir. 1979) (following Sundstrand); W. Page Keeton et al., *Prosser and Keeton on The Law of Torts* 214 (5th ed. 1984).

[143] Release at 18–19 & n.42. The Standard omits the second part of traditional formulations of recklessness that requires ''an extreme departure of ordinary care.'' *See Sundstrand*, 553 F.2d at 1045; Keeton, *supra* note 142, at 214. One comment letter proposed the addition of an ''extreme departure'' element. *See* J. Michael Cook, Chairman and Chief Executive Officer, and Philip R. Rotner, General Counsel, Deloitte and Touche LLP, CL 77 at 5–6.

[144] Release at 22 n.49.

[145] Keeton, *supra* note 142, at 214 (footnotes citing cases omitted).

[146] Keeton, *supra* note 142, at 211 (quoting common law judge for proposition that '''gross' negligence is merely the same thing as ordinary negligence, 'with the addition * * * of a vituperative epithet''').

[147] *e.g.*, Release at 18–26.

[148] Release at 30.

[149] *See* Release at 13 n.31, 14 n.32 & 23.

[150] *Checkosky* II, 139 F.3d at 223.

[151] *Checkosky* II, 139 F.3d at 224.

[152] *See* PricewaterhouseCoopers LLP, CL 116; *see also, e.g.,* Peter D. Rothman, Volt Information Sciences, Inc., CL 28; Eric Tanquist, CL 32; Daniel S. Kuerner, CPA, CL 33; James I. Linkous, CPA, CL 34; Raymond F. Marin, Hixson, Marin, Powell & De Sanctis, P.A., CPAs, CL 45; AICPA, CL 84; Nancy L. Ryder, CL 85; Dominick A. Bellino, CPA, CL 87; Michael D. Castleberry, CPA, CL 90; Wayne Scroggins, CL 89; Public Company Practice Committee, Colorado Society of CPAs, CL 99; Myron J. Banwart, CPA, CL 125.

[153] *E.g.,* AICPA, CL 84 at 19 (citing *Carter,* 47 S.E.C. at 511); *see also* KPMG Peat Marwick, CL 82 at 2 & 6–8.

the Commission to bar accountants from SEC practice for much less serious misdeeds than required to bar members of corporate management (who almost without exception have the greatest culpability for financial frauds in which accountants have secondary liability) from serving as officers and directors of public companies.[154] The Standard fails to remedy these disparities.

This point is not obscure. To the contrary, Judge Randolph made it a centerpiece of his demonstration that the Commission had acted arbitrarily and capriciously in *Checkosky I.*[155] Relying on *Carter,* ''the Commission's most comprehensive discussion of the history, purpose and operation of Rule 2(e),'' Judge Randolph held that the Commission was required to apply a scienter standard in all Rule 102(e) proceedings and that the Commission had therefore erred in failing to apply a scienter standard in *Checkosky.*[156]

Accountants and lawyers do have different duties and obligations. As a general matter, lawyers must zealously advocate the interests of their private clients, while accountants have an overriding duty to the investing public. As a consequence of accountants' public obligations—the ''P'' in CPA—they have a statutory duty, under certain circumstances, to report a client's past fraudulent activities.[157] As was Judge Randolph, I am aware of these differences, but fail to understand why they should make a difference for purposes of Rule 102(e).[158] As several commenters perceptively pointed out, Rule 102(e) proceedings for ''improper professional conduct'' are necessarily based on the failure to follow applicable professional standards.[159] Because applicable standards already incorporate and distinguish between the differing duties and obligations of various professions, there is no logical basis for the Commission to apply different mental state requirements under Rule 102(e).[160]

In any event, regardless of whether the Commission *could* justify applying different mental state requirements to lawyers and accountants—and I do not totally foreclose this possibility—it has not made even an attempt to do so.[161] Other than to state the obvious, i.e., ''this release does not address the conduct of lawyers,'' the Release fails to discuss why the Commission should apply a less forgiving standard to accountants than to lawyers and others who also play an equally crucial role in the ''financial reporting process.''[162] Indeed, the Release fails even to cite, much less to discuss *Carter.*

In *Checkosky I*—on this very issue of the Commission's differential treatment of accountants and lawyers under Rule 102(e)—Judge Randolph noted that ''[o]ne of the abiding principles of administrative law is that when agencies refuse to treat like cases alike, they act arbitrarily, in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A).'' [163] Judge Randolph elaborated that should factual differences ''lead to variations in the interpretation and application of [an agency's] rules,'' the agency then becomes obligated to provide a ''reasoned explanation'' of why the differences should matter.[164] Although Judge Silberman choose to rely primarily on the lack of clarity in the Commission's first *Checkosky* opinion, he too noted that the Commission had failed to give an adequate explanation for its differential treatment of lawyers and accountants under Rule 102(e).[165] The Commission now repeats the same arbitrary and capricious error it committed in *Checkosky.*[166]

B. The Standard Will Interfere With Accountants' Exercise of Their Independent Professional Judgment

Our system of securities regulation is based on disclosure. To ensure that Commission filings and other statements made to the investing public are truthful and accurate, we have to rely in large part on the work of talented, well-trained professionals. Accordingly, I fully agree with former Chairman Williams' statement that we would be unable to administer effectively the securities laws if those ''involved in the capital raising process were not routinely served by professionals of the highest integrity and competence, well-versed in the requirements of the statutory scheme Congress has created.''[167] On the other hand, I also believe that the Commission has a limited mandate under Rule 102(e) for determining who may ''practice before'' us, and that we must exercise a high degree of self-restraint in this area.

As to accountants, the very nature of their responsibilities within our disclosure system compels restraint. Accountants, like other securities professionals subject to Rule 102(e), must make difficult judgment calls, navigating through complex statutory and regulatory requirements.[168] In addition, accountants are required to follow GAAS and to apply GAAP. These determinations demand the application of independent professional judgment and often involve matters of first impression.

The Commission itself recognized the importance of these principles in *Carter,* when it asserted that, in order to assure the exercise of a professional's ''best independent judgment,'' the professional ''must have the freedom to make innocent—or even, in certain

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[154] *See* AICPA, CL 84 at 20 (referring to showing Commission must make to obtain an officer and director bar under Section 20(e) of the Securities Act or Section 21(d)(2) of the Exchange Act); Arthur Andersen, CL 98 at 8–9 & n.21. In addition, the standard in the Proposing Release and the Standard disadvantage accountants as compared with similarly situated broker-dealers, for whom the Commission has direct statutory authority to discipline. *See* Arthur Andersen, CL 98 at 9 & n.22 (citing Section 15(b)(6) of the Exchange Act).

[155] 23 F.3d at 483–87.

[156] *Id.*

[157] *See Checkosky I,* 23 F.3d at 485–86; *see also* Exchange Act 10A(b)(3), 15 U.S.C. 78j–1(b)(3) (requiring auditors to report illegalities to board of directors, and resign and notify the Commission if the board fails to notify the Commission).

[158] 23 F.3d at 486–87.

[159] BDO Seidman, CL 80 at 5–6 & n.6; AICPA, CL 84 at 22–23.

[160] *Id.*

[161] The Commission has limited indirect statutory authority to regulate the conduct of accountants that it lacks for lawyers. *See* ABA, CL 81 at 11 & n.6 (citing Items 25 and 26 of Schedule A to the Securities Act, and Section 10A and Section 12(b)(1)(J) and (K) of the Exchange Act); *see also* Securities Act Section 19(a), 15 U.S.C. 77s(a) (Commission has authority, among other things, to define accounting terms and to prescribe accounting methods used in preparation of financial forms filed with the Commission).

[162] Release at 25–26.

[163] 23 F.3d at 483 (citations omitted).

[164] 23 F.3d at 483–84.

[165] 23 F.3d at 458–59. The third judge in *Checkosky I,* District Judge Reynolds accepted the Commission's arguments that *Carter* did not apply to the ''improper professional conduct'' provision of Rule 102(e) and that, in any event, the Commission had a rational reason for not following *Carter* based on the ''overriding duty'' of accountants/auditors to the investing public. 23 F.3d at 494–95.

[166] Lest I be thought obtuse, I will point out my awareness that this omission is entirely deliberate. Based on discussion at the Commission's open meetings on June 12, 1998 and September 23, 1998, some at the Commission intend to ramp up our Rule 102(e) enforcement program as to lawyers, a prospect I view with alarm. Because, as always, the Commission wishes to leave its future options open regarding Rule 102(e), the Release intentionally glosses over this point.

[167] *Keating,* 47 S.E.C at 120 (Chairman Williams, concurring).

[168] One commenter offered an eloquent statement of this core issue:

[GAAP and GAAS] are not like cookbook recipes, where reading words and following directions results in a uniform outcome. Resolution of many auditing and accounting issues requires judgment. Even where there is written guidance, there is often ambiguity. The accountant must attempt to synthesize practice and different pronouncements that may speak ambiguously or indirectly to the issue and that may have changed over time. What the proposed amendment labels as a ''violation of professional standards'' is apt to be, in practice, a difference of opinion between the Commission's staff and the respondent accountant over how a particular pronouncement or pronouncements should be applied.

PricewaterhouseCoopers LLP, CL 116 at 6.

cases, careless—mistakes without fear of [losing] the ability to practice before'' us.[169] Equating negligence with ''improper professional conduct'' will impair relationships between professionals and their clients. If such an adverse impact occurs, our ability to rely on these professionals to enhance compliance with the securities laws will be crippled. I share the view endorsed by the Commission in *Carter* that professionals ''motivated by fears for their personal liability will not be consulted on difficult issues.'' [170]

Securities professionals owe a duty to serve the interests of their clients. To discharge this duty, professionals must enjoy the cooperation and trust of their clients. Indeed, in construing *Carter,* Judge Randolph observed:

[W]ithout a scienter requirement, lawyers would slant their advice out of fear of incurring liability, and management therefore would not consult them on difficult questions. I cannot see why this sort of reasoning would not apply as well to auditors. I recognize that although companies need not retain outside counsel, they are legally compelled to ''consult'' independent accountants * * *. This creates an obligation on the part of management to cooperate with and provide information to the auditor. * * * There are, however, degrees of cooperation. Encouraging management to be completely candid with its auditor about difficult accounting issues may be just as desirable as encouraging management to consult candidly with outside lawyers, and for similar reasons.[171]

The steadfast belief that the Commission must respect the good faith judgments made by accountants and other professionals formed the basis of my dissent from the Commission's second *Checkosky* opinion.[172] The outpouring of comment letters highlighting the importance of this issue has confirmed and validated my prior view.[173] Even some of those few commenters to support the June proposal also recognized the importance of respecting an accountant's exercise of independent professional judgment.[174]

Because the fear of Commission discipline will intimidate accountants and prevent them from exercising their best independent professional judgment, accountants will likely refuse to opine on difficult issues or bend over backwards to conform their views to those of the Commission's staff.[175] As a result, financial statements will become overly conservative in derogation of the fundamental accounting principal of neutrality. One commenter, a professor of accounting, stated that he could not support the addition to Rule 102(e) of the single negligent act provision for this very reason:

I believe that it is important that the SEC foster neutrality in financial statements. That is, * * * Rule 102(e) should not foster conduct that results in either overstatement or understatement of amounts in financial statement presentations and disclosures. The rule should therefore foster choosing accounting policies, recording transactions and events, and making accounting estimates toward a neutral framework. The terminology in the proposed Rule 102(e)(1)(iv)(B)(1), especially in the light of the discussion in the Release and the framework for litigation currently existing, does not foster such neutrality. Accountants * * * will increasingly be driven to what some have referred to as ''conservative accounting'' which can harm the capital market system.[176]

The AICPA similarly remarked that the standard in the Proposing Release ''would chill the provision of the highest quality audit and accounting services'' and that ''exposure of auditors to sanctions based on a single negligent mistake would introduce an overly conservative bias into the financial reporting process.'' [177]

Other commenters strongly concurred that the standard in the Proposing Release would have a detrimental effect on an accountant's neutrality that is contrary to the public interest.[178] One commenter acknowledged that the public does have a legitimate interest in the integrity of the Commission's processes, but ''the public also benefits from an environment in which accountants are free to exercise their independent judgment without fear that a particular judgment might be viewed, in hindsight, as subject to sanction by the SEC.'' [179] Another commenter correctly remarked that ''the proposed rule 102(e) amendment would have a chilling effect on the justifiable exercise of professional judgment * * * contrary to the intent of the Court in *Checkosky* v. *SEC.*'' [180]

In my view, the Standard is no less flawed than that set forth in the Proposing Release—it still fails to give adequate protection to an accountant's independent professional judgment. The Release's discussion of this issue amounts to no more than a conclusory tautology.[181] At the same time the Release professes the Commission's deep respect for an accountant's need to exercise independent professional judgment—and that this factor has caused the Commission to adopt a standard that is purportedly more deferential than that in the Proposing Release—the Release emphasizes at least four times, in various phrasings, that ''the Commission possesses

[169] 47 S.E.C. at 504.

[170] *Id.*

[171] *Checkosky I,* 23 F.3d at 485.

[172] David J. Checkosky, 1997 WL 18303 (S.E.C.), at *14.

[173] *See, e.g.,* Richard Y. Roberts, CL 18 at 4; Barbara Hutson Gonzales, CPA, McElroy, Quirk & Burch, CL 25; Mike Molinaro, CL 26; Daniel S. Kuerner, CPA, CL 33; J. Eric Bjornholt, CPA, Senior Tax Manager, Microchip Technology Incorporated, CL 43; Howard McElroy, CL 44; Raymond F. Marin, Hixson, Marin, Powell & De Sanctis, P.A., CPAs, CL 45; John Sommerer, CPA, CL 46; Edward L. Rand, Jr., Vice President and Treasurer, Atlantic American Corp., CL 47; Ronald H. Beck, Vice President and Chief Financial Officer, Columbus Energy Corp., CL 49; Dan Ramey, CPA, Manager—KEI Operations Accounting (''KEI''), CL 60; BDO Seidman, CL 80 at 4 & 8–9; KPMG Peat Marwick, CL 82 at 2 & 11–12; Public Company Practice Committee, Colorado Society of CPAs, CL 99 at 1–2; Edwards Leap & Sauer, CPA's, CL 102; Larry D. Cyrus, CPA, Finance Manager, Ericsson, Inc., CL 106; Dennis K. Wilson, Vice President, Finance, and Chief Financial Officer, Beckman Coulter, Inc., CL 113; Jim Brausen, CPA, CL 132; Frank H. Brod, CPA, CL 137; David D. Gathman, CL 141; SABRE, CL 144.

[174] *See, e.g.,* Peter C. Chapman, Teachers Insurance and Annuity Association of America (''TIAA'') and the College Retirement Equities Fund (''CREF''), CL 8 at 4 (''We recognize that an overly broad interpretation of 'improper professional conduct' could create an environment of uncertainty in the accounting profession. This could impair the investment process by restricting the flow of information.'').

[175] Arthur Andersen, CL 98, at 5–7.

[176] Ray G. Stephens, KPMG Peat Marwick Professor, Kent State University, [currently serving as Senior Academic Fellow, Office of the Auditor of the State of Ohio], CL 42 at 4–5. Other accounting academics also expressed strong disagreement with the negligence standard in the Proposing Release. *See* Stella Fearnley and Richard Brandt, University of Portsmouth, United Kingdom, CL 161 at 2.

[177] AICPA, CL 84 at 30–31.

[178] SABRE, CL 144 (''The investing public benefits from an environment in which accountants are free to exercise their best independent judgment without fear that a particular judgment might be viewed as subject to sanction by the SEC.''); *see also, e.g.,* Raymond F. Marin, CL 45 (proposal ''would actually diminish the vital role of accountants as guardians of the financial reporting system''); Edward L. Rand, CL 47 (proposal ''would allow the SEC, with the benefit of hindsight, to disagree with [accountants'] judgments and thereby subject them to sanctions''; ''[s]uch a system is certainly not in the best interest of the investing public''); KEI, CL 60 (proposal ''completely out of line with the philosophy of accountants being able to make business-related decisions and exercise independent judgment in accounting treatment''; proposal will cause accountants to be overly conservative); KPMG Peat Marwick, CL 82 at 2 (''the proposed negligence standard conflicts with the public interest in fostering the exercise of independent accounting judgment, free from fear that any individual judgment could be second-guessed—with the benefit of 20/20 hindsight—by the Commission as part of a Rule 102(e) proceeding''); Dennis K. Wilson, CL 113 (''every time one of our professionals is asked to make a judgment regarding an issue, the fear of subsequently being deemed to have acted inappropriately will be present, which may keep that person from adequately considering all available options and may unduly impact the ultimate decision made''); David D. Gathman, CL 141 (proposed rule ''will serve to weaken [accountants'] role as guardians of the integrity of the financial reporting system''.

[179] Raymond F. Marin, CL 45. Accord Barbara Hutson Gonzales, CL 25; J. Eric Bjornholt, CL 43.

[180] John Sommerer, CPA, CL 46.

[181] Release at 18–23.

authority, wholly independent of Rule 102(e), to address and deter * * * negligent conduct.'' [182] Likewise, in a reprise of the Commission's losing argument in *Checkosky II,*[183] the Release expressly states that an accountant's subjective good faith will have no bearing on a finding of liability under the negligence-based provisions of the new standard.[184] I find these passages positively Orwellian: the Commission seems to be saying that if our staff disagrees with an accounting judgment call, even if we do not sue you under Rule 102(e), we will find a way to sue you for some other violation.[185] Either way, the chilling effect on accountants' professional judgment caused by the Commission's return to the discredited *in terrorem* tactics of the *National Student Marketing* era surely remains the same.[186]

C. The Costs of The Standard Will Exceed Its Benefits

The Release asserts ''the Commission continues to believe that the amendment will impose no costs.'' [187] I find this statement highly questionable, to say the least. The whole point of the Commission's adoption of a new Rule 102(e) standard for accountants and its recently announced crackdown on purportedly improper accounting practices is to require more care and greater scrutiny on the part of accountants. But increased care and scrutiny are not cost-free items. Clearly, accountants will have to devote greater time and effort to performing audits. I suspect that accountants will pass these costs along to their audit clients, as well they should. While one could argue that increased care and scrutiny might produce net benefits, one cannot reasonably argue, in my view, that they have no associated costs.

Moreover, I disagree that the new standard will produce net benefits. Rather, I concur with the numerous commenters who offered compelling arguments why the standard contained in the Proposing Release will not result in significant benefits.[188] I do not think that the revisions made to the standard in the Proposing Release redress these problems, and, accordingly, these comments have equal applicability to the Standard. For instance, one commenter asserted that, under the standard in the Proposing Release:

> audit and tax fees from a continuing audit would substantially increase. The steps and costs to take a company public would escalate. The difficulty of conducting day to day business affairs should the amendment become effective could be staggering.[189]

Another commenter stated that the proposed amendment might well ''shift the focus to more 'CYA' type behavior rather than making sure that the information is accurate.'' [190] A third commenter persuasively argued that:

> If an auditor has to be looking over his shoulder, for fear of losing his livelihood, his work will be bogged down in trying to get the absolute answer. Labor costs will soar on audits and the public ultimately will not be served.[191]

The ABA comment letter observed that the standard in the Proposing Release could well deprive the public of competent auditors, and that, since ''the number of accounting firms providing audit services to public companies has declined sharply in the past 20 years,'' this decline, combined with the consolidation occurring in the accounting profession, might have the effect of increasing audit fees.[192] I do not think the Release adequately refutes these comment letters.[193]

In my view, the costs of today's proposal will substantially outweigh its benefits. I have long had an interest in promoting small business, and I think the proposal will, in all likelihood, drastically increase the audit costs for start-up and small public companies. These costs will amount to an unwarranted drag on capital formation.

D. The New Standard Will Unfairly Disadvantage Small Firms

Several commenters wrote that the standard contained in the Proposing Release would unfairly eliminate or lessen the ability of small firms or sole practitioners to audit public companies.[194] I think these comments have merit, and that, in this regard, the Release shares the same flaws as the Proposing Release. In my view, smaller CPA firms can and do play a vital role in auditing public companies, particularly smaller public companies.

One commenter noted that raising the level of ''professional risk'' might preclude ''many smaller CPA firms from participating in [audits of public companies]'' and that ''at least for [small business] registrants, * * * smaller CPA firms can often provide better and more affordable service.'' [195] Another commenter similarly remarked that the proposed amendment would ''further restrict the participation in SEC practice to the few 'good ol' boys' who currently dominate in that area.'' [196] The ABA comment letter expressed concern that sanctions imposed under the new standard might be applied in a disproportionate manner and have a disproportionate effect on smaller firms.[197]

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[182] Release at 20; *see id.* at 12 & n.29 (a ''single judgment error'' may not subject ''the person committing such an error to discipline under Rule 102(e),'' but that person ''would be exposed to the sanctions available under * * * other provisions''); *see also id.* at 21 & n.47 (''an isolated error in judgment,'' even if not actionable under Rule 102(e), ''could have legal consequences''). *Accord id.* at 23 (noting ''the availability of [Commission] remedies other than Rule 102(e) to address ordinary negligence'').

[183] 139 F.3d at 224 (referring to Commission argument that Rule 102(e) does not require proof of any particular mental state, but that mental state was ''relevant only to the choice of sanction'').

[184] Release at 33 (While the negligence aspects of the new standard ''do[] not require subjective inquiry into the accountant's intent * * * [, t]he Commission may, however, consider the accountant's good faith when determining what sanction would be appropriate.'').

[185] How times have changed. Barely three years ago, the Commission's then-General Counsel disclaimed any resort to administrative cease and desist proceedings as a means to circumvent the Commission's prudential limitations on bringing ''original'' Rule 102(e) proceedings against lawyers. *See* Lorne & Callcott, *supra* note 19, 50 Bus. Law. at 1316–17; *see also supra* note 44.

[186] *See* Mary C. Daly, *Resolving Ethical Conflicts in Multijurisdictional Practice—Is Model Rule 8.5 the Answer, an Answer, or No Answer at All?,* 36 S. Tex. L. Rev. 717, 781 n.261 (1995) (''The SEC has been particularly adept at using its licensing scheme as an *in terrorem* weapon to 'encourage' lawyers to police their clients to prevent securities law violations.''). Many commentators have accused the Commission of improperly using Rule 102(e) to second-guess a professional's judgment. *See, e.g.,* Kenneth J. Bialkin & Chase A. Caro, *Issuer Fraud and Financial Reporting,* 692 PLI/Corp 299, 343 & 350 (PLI Corp. Law & Practice Course Handbook Series No. B46927, 1990) (Commission has ''used Rule 2(e) to second-guess the accountant's professional judgment,'' citing cases; ''in many instances [GAAS] call upon the accountant to exercise professional judgment, yet the SEC is using its disciplinary proceedings to second-guess that judgment,'' citing cases; ''[t]he SEC has, in many cases, instituted disciplinary proceedings in situations where the accountant's treatment of a given issue has a reasonable basis in accounting literature''); Downing & Miller, *supra* note 17, 54 Notre Dame Law. at 789–90; Crane, Note, *supra* note 17, 53 Fordham L. Rev. at 355.

[187] Release at 41.

[188] *E.g.,* ABA, CL 81 at 7; AICPA, CL 84 at 30–31; Arthur Andersen, CL 98 at 6.

[189] SABRE, CL 144.

[190] Jay Shah, CL 95.

[191] RFoggnwl@aol.com, CL 65.

[192] ABA, CL 81 at 7; *see also* BDO Seidman, CL 80 at 9 (June proposal threatens to ''flush[ ] the baby down the drain with the bathwater'').

[193] Release at 37–41.

[194] *See, e.g.,* Edmond B. (Ted) Gregory, CPA/ABV, CBA, Linton, Shafer & Company, P.A., CPAs, CL 22; John G. Ratliff, CL 27; John Sommerer, CPA, CL 46.

[195] John G. Ratliff, CL 27.

[196] John Sommerer, CL 46.

[197] ABA, CL 81 at 12; *see Touche Ross,* 609 F.2d at 582 n.21 (noting but not deciding unfairness of holding national accounting firm with more than 500 partners vicariously liable under Rule 102(e) for alleged misconduct of two retired partners); *see also* Coppolino, Note, *supra* note 17, 63 Fordham L. Rev. at 2248 (Under Rule 102(e), ''[t]he Commission appears to impose lighter sentences on Big Six firms as compared to solo practitioners and small- or medium-sized firms.''). *Cf. Blinder, Robinson & Co. v. SEC,* 837 F.2d 1099, 1112 (D.C. Cir. 1988) (expressing ''concern'' that SEC may impose more

These last comments seem indirectly validated by the Release, which notes both that most of the accounting and auditing practiced before the Commission is ''conducted by the 'Big Five' firms'' and that ''three of the largest five accounting firms * * * suggested that the Commission could appropriately adopt'' the Standard.[198] It seems that these large firms have a different perspective as to the likely effects of the Standard on their respective businesses than do their smaller competitors.

VI. The Commission Has Failed To Comply With the Administrative Procedure Act

I am more interested in the substance of today's amendment than with the procedures used to adopt it. It appears, however, that the Commission may not have fully complied with the requirements of the Administrative Procedure Act (APA) in adopting the amendment.[199] In particular, I have concerns that the Commission may have failed to give adequate notice that: (a) the Standard would apply to conduct occurring before its effective date; and (b) as to the subpart (B)(1) of the proposed amendment, the standard of ''highly unreasonable conduct'' might be adopted.

Under the APA, an agency fulfills its obligation to give adequate notice if it '' 'provide[s] sufficient factual detail and rationale for the rule to permit interested parties to comment meaningfully.' '' [200] The general test for whether an agency has to provide new notice and resolicit comment on a revised proposal before adopting it, as is the case with the proposed amendment to Rule 102(e), is ''whether the final rule promulgated by the agency is a 'logical outgrowth' of the proposed rule.'' [201] The Release states that the new standard will be used in ''all cases considered after the amendment's effective date, * * * regardless of when the conduct in question occurred.'' [202] Any potential application of the new standard to conduct occurring before its effective date was not mentioned and is not a ''logical outgrowth'' of anything contained in the Proposing Release.

As to the ''highly unreasonable conduct'' part of Rule 102(e)(1)(vi)(B)(1), the situation is less clear. The Proposing Release did mention that the Commission was considering possible standards, including that of recklessness, other than that proposed.[203] The ''highly unreasonable'' standard adopted, however, was not specifically mentioned anywhere in the Proposing Release. The Release even admits that ''new terminology—the 'highly unreasonable' standard'' is included in the new rule.[204] Because this ''new terminology'' was not included in the Proposing Release the Commission deprived interested parties of the opportunity to comment meaningfully on the new standard of liability under Rule 102(e).

Moreover, regardless of whether the Commission has achieved technical compliance with the APA, I strongly believe that the Commission would have been better served if it reproposed the Standard for notice and comment, thereby allowing interested parties the opportunity to provide us with their insights on its advantages and disadvantages. It is not clear what, if anything, the Commission has gained through its rush to adopt the Standard.

VII. The Commission Intends To Expand Its Authority Under Rule 102(E) Even Further

Although predicting the future is necessarily an inexact science, ominous signs already exist regarding the Commission's intentions to expand its authority under Rule 102(e). As previously noted, within days of the adoption of the new Rule 102(e) standard on September 23, 1998, the Commission announced a major new initiative to address improper accounting practices.[205] For the sake of all accountants with an SEC practice, I hope that the Commission's recently announced crackdown does not represent a return to the days of *National Student Marketing and Arthur Young,* and a new '' 'reign of terror.' '' [206] But that remains to be seen. In my view, the accounting profession has already sustained irreparable harm from the Commission's adoption of the new standard on September 23, 1998. In particular, I believe that the new amendment will have a chilling effect on the independent professional judgment of all accountants who practice before the Commission.[207]

As also noted above, the amendment creates an imbalance between the treatment of lawyers and accountants under Rule 102(e).[208] Although I do not foreclose the possibility that a valid rationale may exist to justify this disparity, the Release offers none.[209] The reason for this omission was made clear by the discussion at our open meetings on June 12, 1988, and September 23, 1998—some at the Commission intend to ramp up our Rule 102(e) enforcement program as to lawyers. While I still have some hopes that the institutional lessons learned from the *National Student Marketing* debacle might ultimately prevail, it seems clear that some at the Commission would like to apply the new Rule 102(e) standard to lawyers, as well as accountants.

To accomplish this goal, presumably the Commission would have to overrule *William R. Carter.*[210] Again, I hope these events do not come to pass, but I fear that, absent judicial intervention, they will happen.

* * * * *

Unfortunately, although acting in good faith, it seems that the Commission is bound and determined to repeat its past mistakes. For the good of all professionals who practice before us, as well as the Commission itself, investors and issuers, I hope that these matters receive definitive clarification sooner rather than later.

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disproportionately heavy sanctions on ''small, newer [brokerage] firms than it does on old-line, or at least more established houses'').

[198] Release at 21 & 34.

[199] 5 U.S.C. 553(b) & (c).

[200] *American Water Works Ass'n v. EPA,* 40 F.3d 1266, 1274 (D.C. Cir. 1994) (quoting *Florida Power & Light Co. v. United States,* 846 F.2d 765, 771 (D.C. Cir. 1988)).

[201] *Id.; see also Omnipoint Corp. v. FCC,* 78 F.3d 620, 631 (D.C. Cir. 1996).

[202] Release at 6.

[203] *See* Proposing Release, 1998 WL 311988 (S.E.C.), at *5.

[204] Release at 22 n.49.

[205] *See supra* note 6 and accompanying text.

[206] Block & Hoff, *supra* note 37, N.Y.L.J., Sept. 23, 1993, at 5.

[207] *Cf.* Judah Best, *supra* note 17, 36 Bus. Law. at 1817 (noting Rule 102(e)'s ''chilling effect upon counsel,'' and referring to Rule 102(e) as ''a vehicle for abuse'').

[208] *See supra* Section V.A.

[209] *See Keating, Muething & Klekamp,* 47 S.E.C. 95, 110–11 (1979) (Commissioner Karmel, dissenting) (as result of the Congressional grant of power to define accounting terms and to require that financial statements be certified by an independent public accountant, ''[i]t therefore can be argued'' that the Commission may have authority to discipline accountants that it lacks for lawyers).

[210] 47 S.E.C. 471.

federal register

Monday
October 26, 1998

Part III

Department of Education

National Institute on Disability and Rehabilitation Research; Notice of Proposed Long-Range Plan for Fiscal Years 1999–2004; Notice

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research; Notice of Proposed Long-Range Plan for Fiscal Years 1999–2004

SUMMARY: The Secretary proposes a Long-Range Plan (LRP) for the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years (FY) 1999–2004. As required by the Rehabilitation Act of 1973, as amended, the Secretary takes this action to outline priorities for rehabilitation research, demonstration projects, training, and related activities, and to explain the basis for these priorities.

DATES: Comments must be received on or before November 25, 1998.

ADDRESSES: All comments concerning this proposed LRP should be addressed to Donna Nangle, U.S. Department of Education, 600 Maryland Avenue, S.W., room 3418, Switzer Building, Washington, D.C. 20202–2645. Comments may also be sent through the Internet: comments@ed.gov. You must include the term ''Long-Range Plan'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–2742. Internet: Donna__Nangle@ed.gov

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Invitation to Comment: Interested persons are invited to submit comments and recommendations regarding these proposed priorities. All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 3424, Switzer Building, 330 C Street S.W., Washington, D.C., between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday of each week except Federal holidays.

SUPPLEMENTARY INFORMATION: This proposed LRP presents a five-year agenda anchored in consumer goals and scientific initiatives. The proposed LRP has several distinct purposes:

(1) To set broad general directions that will guide NIDRR's policies and use of resources as the field of disability enters the 21st century;

(2) To establish objectives for research and dissemination that will improve the lives of individuals with disabilities and from which annual research priorities can be formulated;

(3) To describe a system for operationalizing the Plan in terms of annual priorities, evaluation of the implementation of the Plan, and updates of the Plan as necessary; and

(4) To direct new emphasis to the management and administration of the research endeavor.

This proposed LRP was developed with the guidance of a distinguished group of NIDRR constituents—individuals with disabilities and their family members and advocates, service providers, researchers, educators, administrators, and policymakers, including the Commissioner of the Rehabilitation Services Administration, members of the National Council on Disability, and representatives from DHHS.

The authority for the Secretary to establish a LRP is contained in sections 202(h) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 762(h).

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Note: The official version of this document is the document published in the **Federal Register**.

Applicable Program Regulations: 34 CFR Parts 350 and 353.

Program Authority: 29 U.S.C. 760–764.

Dated: October 19, 1998.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

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Section One

Chapter 1: Introduction and Background

''Research has the potential to reinvent the future for millions of people with disabilities and their families'' (Richard W. Riley, U.S. Secretary of Education).

Two developments have converged to enhance the significance of disability research. First, breakthroughs in biomedical and technological sciences have changed the nature of work and community life. As these breakthroughs provide the potential for longer and more fulfilling lives for individuals with disabilities, they reinforce the second major development—successful independent living and civil rights advocacy by disabled persons. This intersection of scientific progress and empowerment of disabled persons has generated momentum for disability research. These developments highlight the importance of more fully integrating disability research into the mainstream of U.S. science and technology policy, and into the Nation's economic and health care policies.

An estimated 43 million Americans are significantly limited in their capacity to participate fully in work, education, family, or community life because they have a physical, cognitive, or emotional condition that requires societal accommodation. Public Law 101–336, the Americans with Disabilities Act (ADA) of 1990, declares that individuals with disabilities have fundamental rights of equal access to public accommodations, employment, transportation, and telecommunications. The recognition of these rights, and of society's obligation to facilitate their attainment, provides the opportunity for major improvements in the daily lives of individuals with disabilities.

It is the mission of the National Institute on Disability and Rehabilitation Research (NIDRR) to generate, disseminate, and promote the

full use of new knowledge that will improve substantially the options for disabled individuals to perform regular activities in the community, and the capacity of society to provide full opportunities and appropriate supports for its disabled citizens.

NIDRR's Statutory Purpose

The inception of a Federal rehabilitation research program was part of the legacy of the late Mary E. Switzer, pioneering director of the Federal-State vocational rehabilitation program. By establishing NIDRR [1] in 1978, through Amendments to the Rehabilitation Act of 1973 (Public Law 93–112), Congress realized Switzer's vision and created a research institute in the public interest. As such, NIDRR must generate scientifically based knowledge that furthers the values and goals of the disability community, the knowledge needs of service providers, and the creation of rational public policy.

In founding NIDRR, Congress recognized both the opportunities for technological and scientific advances to improve the lives of individuals with disabilities and the need for a comprehensive and coordinated approach to research, development, demonstration, information dissemination, and training. The Rehabilitation Act of 1973, as amended, (with significant changes in 1992), charged this Institute with the responsibility to provide a comprehensive and coordinated program of research and related activities to maximize the full inclusion and social integration, employment, and independent living of individuals of all ages with disabilities, with particular emphasis on improving the coordination and effectiveness of services authorized under the Act. Related activities were mandated to include the widespread dissemination of research-generated knowledge and practical information to rehabilitation professionals, individuals with disabilities, researchers, and others; the promotion of the transfer of rehabilitation technology; and an increase in opportunities for researchers who are individuals with disabilities or members of minority groups.

NIDRR is ideally positioned to facilitate the transfer of new knowledge into practice given its administrative co-location with two major service programs—the Rehabilitation Services Administration (RSA) and the Office of Special Education Programs (OSEP)—in the Office of Special Education and Rehabilitative Services (OSERS). NIDRR's linkage to the greater science community through its leadership of the Interagency Committee on Disability Research (ICDR) affords an opportunity to facilitate the transfer of advances in basic research into the agenda for applied research and knowledge diffusion.

To further advance work in the field of applied research, the legislation requires a Long-Range Plan,[2] updated every five years, describing NIDRR's future research agenda. This Long-Range Plan presents a five-year agenda anchored in consumer goals and scientific initiatives. The plan has several distinct purposes:

(1) To set broad general directions that will guide NIDRR's policies and use of resources as the field of disability enters the 21st century;

(2) To establish objectives for research and dissemination that will improve the lives of individuals with disabilities and from which annual research priorities can be formulated;

(3) To describe a system for operationalizing the Plan in terms of annual priorities, evaluation of the implementation of the Plan, and updates of the Plan as necessary; and

(4) To direct new emphasis to the management and administration of the research endeavor.

This Long-Range Plan was developed with the guidance of a distinguished group of NIDRR constituents—individuals with disabilities and their family members and advocates, service providers, researchers, educators, administrators, and policymakers, including the Commissioner of the Rehabilitation Services Administration, members of the National Council on Disability, and representatives from DHHS. It draws upon public hearings and planning activities conducted under the prior NIDRR administration (William H. Graves, Director) and on papers prepared for the Plan by more than a dozen authors. The Plan addresses a range of diverse objectives, including:

(1) The needs of individuals with disabilities for knowledge and information that will enable them to achieve their aspirations for self-direction, independence, inclusion, and functional competence;

(2) The needs of rehabilitation service providers for information on new techniques and technologies that will enable them to assist in the rehabilitation of individuals with disabilities;

(3) The needs of researchers to advance the capabilities of science as well as the body of scientific knowledge;

(4) The needs of society, and its leadership, for strategies that will enable it to facilitate the potential contributions of all citizens; and

(5) The need to transfer findings from basic to applied research.

Accomplishments of the Past

In creating NIDRR, Congress recognized that research has contributed substantially to improvements in the lives of individuals with disabilities and their families. Individuals with disabilities live longer, have a better quality of life, enjoy better health, and look forward to more opportunities than they did 30 years ago, and more advances occur every day. Today it is commonplace to find people in wheelchairs traveling in airplanes and private vehicles, people who are blind using computers, and people who are deaf attending the theater, while individuals who have significant disabilities are being recognized as world leaders in the arts and sciences. These developments owe much to research advances at both the individual and societal levels.

Advances at the Individual Level

Research, and its use to improve practice, inform policy, and raise awareness, has changed the lives and the outlook for individuals with disabilities and their families. For example, the life expectancy of individuals with paralysis from spinal cord injury has risen continuously in the past 25 years (DeVivo & Stover, 1995). The concerted efforts of U.S. researchers, most of whom received NIDRR support, have succeeded in greatly reducing the number of severe urinary tract infections and other urinary tract complications in this population, thereby reducing renal failure as a cause of death for these individuals from 1st to 12th place over the past two decades. Decubitus ulcers also have been a serious problem for persons with spinal cord injury, as well as for those with stroke, multiple

[1] Established as the National Institute of Handicapped Research, the Institute's name was changed to NIDRR by the 1986 Amendments to the Rehabilitation Act.

[2] As a component of the Department of Education within OSERS, NIDRR is guided by the Department's Strategic Plan, the OSER's Strategic Plan, and NIDRR's own strategic goals and objectives as laid out in its performance plan for the Government Performance and Results Act (GPRA). The Rehabilitation Act, however, calls for a plan from NIDRR—one that identifies research needs and sets forth priorities. This Long-Range Plan describes the issues related to the content and management of NIDRR's research and other activities that will constitute the substantive portion of NIDRR's strategies to achieve its GPRA performance objectives.

sclerosis, and other immobilizing conditions. Decubitus ulcers are destructive and costly to treat, resulting in lost work days, high medical expenses, hospitalizations, and further secondary complications. Through the efforts of medical researchers and rehabilitation engineers, preventive measures have been developed including seating, cushioning, and positioning devices; behavioral protocols; and improved treatment methods. These efforts have greatly reduced the length of time needed for medical treatment of decubiti, and the cost of this treatment.

Rehabilitation engineering research has been responsible for the development of new materials for wheelchairs and orthotic and prosthetic devices that render these technologies comfortable and serviceable, and allow their users to accomplish many important personal goals. For example, wheelchair racers using the newest sports wheelchairs can complete races longer than 800 meters at speeds faster than those of Olympic runners. In the Paralympics, runners using prosthetic legs repeatedly have demonstrated impressive speeds. In everyday life, people who use wheelchairs have benefited from lightweight, transportable chairs as well as powered chairs that greatly increase the independence of some users.

Advances at the Environmental-Societal Level

In the last two decades, NIDRR has participated in an unprecedented expansion of opportunities and possibilities for persons with disabilities. During this period, technology has greatly enhanced the accommodation of disability, self-awareness has raised the expectation of and for persons with disabilities, and advocacy has resulted in recognition of the rights of persons with disabilities to societal access and reasonable accommodations.

Today's research on the application of the principles of universal design to the built environment, information technology and telecommunications, transportation, and consumer products is based on the concept of an environment that is usable by persons with a very broad range of function. For example, after years of research, all television sets are now equipped with decoders that allow people with hearing loss to access most programs. In addition, ergonomic research undergirds the development of workplace designs and the standards for building codes, consumer products, and the telecommunications infrastructure. These advances have been instrumental in leading to a change in the disability paradigm, expanding the focus of disability to include environmental factors, as well as individual factors.

NIDRR's research activities also have led to the development of small businesses in hearing aids, prosthetics, communication devices, and instructional software. NIDRR research provides an important stimulus in a field of orphan products with small markets.

Expectations for the Future: A New Paradigm of Disability

The identification of trends in the distribution of disabilities, the emergence of new disabilities, and the prevalence of disability in the nation's aging population further challenge the disability research field. Additionally, the research field must develop ways to measure and address the impact of environmental factors on the phenomenon of disability.

NIDRR has provided leadership in research leading to a new conceptual foundation for organizing and interpreting the phenomenon of disability—a ''New Paradigm'' of disability. This paradigm is a construction of the disability and scientific communities alike and provides a mechanism for the application of scientific research to the goals and concerns of individuals with disabilities. The new paradigm of disability is neither entirely new nor entirely static. Thomas Kuhn defines paradigm as ''universal achievements that for a time provide model problems and solutions to a community of practitioners'' (Kuhn, 1962). The term paradigm is used here in the quasi-popular sense it has acquired over the last 40 years to indicate a basic consensus among investigators of a phenomenon that defines the legitimate problems and methods of a research field. NIDRR posits that the paradigm in this case applies not to a single field, but to a single phenomenon—''disability''—as it is investigated by multiple disciplinary fields.

The disability paradigm that undergirds NIDRR's research strategy for the future maintains that disability is a product of an interaction between characteristics (e.g., conditions or impairments, functional status, or personal and social qualities) of the individual and characteristics of the natural, built, cultural, and social environments. The construct of disability is located on a continuum from enablement to disablement. Personal characteristics, as well as environmental ones, may be enabling or disabling, and the relative degree fluctuates, depending on condition, time, and setting. Disability is a contextual variable, dynamic over time and circumstance. Environments may be physically (in)accessible, culturally (ex)(in)clusive, (un)accommodating and (un)supportive. For example, on a societal level, institutions and the built environment were designed for a limited segment of the population. Researchers should explore new ways of measuring and assessing disability in context, taking into account the effect of physical, policy, and social environments, and the dynamic nature of disability over the lifespan and across environments.

Perhaps the new paradigm can be understood best in contrast to the paradigm it replaces and through a clarification of the importance the paradigm has for all aspects of research and policy (see Table 1). The ''old'' paradigm, which was reductive to medical condition, and is reflected in many aspects of the Nation's policy and service delivery arenas, has presented disability as the result of a deficit in an individual that prevented the individual from performing certain functions or activities. This underlying assumption about disability affected many aspects of research, rehabilitation, and services.

The new paradigm of disability is integrative and holistic, and focuses on the whole person functioning in an environmental context. This new paradigm of disability is reflected in the ADA and sets a goals framework for research, policy, and delivery of services and supports relative to disability. The new paradigm with its recognition of the contextual aspect of disability—the dynamic interaction between individual and environment over the lifespan that constitutes disability—has significant consequences for NIDRR's research agenda over the next decade. These consequences include: changes in the ways disability is defined and conceptualized; new approaches for measuring and counting disability; a focus on new research issues; and changes in the way research is managed and conducted.

Definitional Issues

One of the fundamental consequences of the new paradigm is the need for the reformulation of definitions. The definition of disability is critical to building a conceptual model that identifies relevant components of disablement and their relationships to each other, and the dynamic mechanisms by which they change. Typically, definitions of disability have varied depending on their intended use.

TABLE 1.—CONTRAST OF PARADIGMS

	''Old'' Paradigm	''New'' Paradigmq
Definition of Disability	An individual is limited by his/her impairment or condition.	An individual requires an accommodation to perform functions required to carry out life activities.
Strategy to Address Disability	Fix the individual, correct the deficit	Remove barriers, create access through accommodation and universal design, restore function, maintain wellness and health.
Method to Address Disability	Provision of medical, vocational, or psychological rehabilitation services.	Provision of supports, e.g., assistive technology, personal assistance services, job coach.
Source of Intervention	Professionals, clinicians, and other rehabilitation service providers.	Peers, mainstream service providers, consumer information services.
Entitlements	Eligibility for benefits based on severity of impairment	Eligibility for accommodations seen as a civil right.
Role of Disabled Individual	Object of intervention, patient, beneficiary, research subject.	Consumer or customer, empowered peer, research participant.
Domain of Disability	A medical ''problem''	A socio-environmental issue involving accessibility, accommodations, and equity.

Note: Adapted from materials prepared for this Long-Range Plan by Gerben DeJong and Bonnie O'Day.

From a research perspective, definitions used for counting and describing disabled people have been important, while definitions establishing eligibility for benefits and services have been critical from the policy perspective.

The majority of Federal definitions of disability, including those in the Rehabilitation Act, the ADA, and the National Health Interview Survey (NHIS), derive from the old paradigm. These definitions all attribute the cause of limitations in daily activities or social roles to characteristics of the individual, that is, ''conditions'' or ''impairments.'' Even the ADA, which promotes accessibility and accommodations, locates the disability with the individual. This is understandable not only because of the time involved in changing a paradigm, but because of the lack of a system to define, classify, and measure the environmental components of disability and the absence of a model to describe and quantify the interaction of environmental and individual variables. This need for a change in definitions must be addressed by activities such as the attempt to revise the International Classification of Impairments, Disabilities, and Handicaps (ICIDH) (1980), to better define and measure the factors external to the individual that contribute to disability.[3]

Measurement Issues

Sources of data, including demographic studies and national surveys, should be adjusted to reflect new definitions or concepts, and to take into account contextual variables in survey sampling techniques. Survey questions must reflect environmental factors as well as individual factors such as socioeconomic characteristics or impairments. Under the new paradigm, questions about employment status, for example, should focus on the need for accommodations as well as on the existence of an impairment. Measures must enable researchers to predict and understand changes in the prevalence and distribution of disabilities—the emerging universe of disability—which illustrates the link between underlying social and environmental conditions such as poverty, race, culture, isolation, the age continuum, and the emergence of new causes of disability, new disability syndromes, and the differential distribution of disability among various population groups in our society.

Concern increasingly is focused on vulnerable populations as researchers find more evidence that disability, and risk thereof, are disproportionately concentrated in populations in poverty, populations that lack access to state-of-the-art preventions or interventions, and populations that are exposed to additional external or lifestyle risk factors. There are new impairments, exacerbated impairments, or new etiologies that are associated with socioeconomic status, education levels, access to health care, nutrition, living conditions, and personal safety. Individuals from racial, linguistic, or cultural minority backgrounds are more likely to live in poverty and to lack adequate nutrition, pre-natal and other health care, access to preventive care, and health information. These individuals also have more exposure to interpersonal violence and intentional injury. The new paradigm's recognition of environmental factors leads to a focus on underserved minority populations—part of the emerging universe of disability discussed in Chapter Two.

New Focus of Research Inquiries

The new paradigm adds, or increases the relative emphases on, certain areas of inquiry. Research must develop new methods to focus on the interface between person and society. It is not enough simply to shift the focus of concern from the individual to the environment. What is needed are studies of the dynamic interplay between person and environment; of the adapting process, by the society as well as by the individual; and of the adaptive changes that occur during a person's lifespan. The aging of the disabled population in conjunction with quality of life issues dictates a particular focus on prevention and alleviation of secondary disabilities and co-existing conditions and on health maintenance over the lifespan. Research must focus on the development and evaluation of environmental options in the built environment and the communications environment, including such approaches as universal design, modular design, and assistive technology that enable individuals with disabilities and society to select the most appropriate means to accommodate or alleviate limitations. Research must lead to a better understanding of the context and trends in our society that affect the total environment in which people with disabilities will live and in which disability will be manifested. These include: economy and labor market trends; social, cultural, and attitudinal developments; and new technological developments. Research must develop ways to enable individuals with disabilities to compete in the global economy, including education and training methods, job accommodations, and assistive technology.

Research must develop an understanding of the public policy

[3] The ICIDH is a manual issued by the World Health Organization (WHO) in 1980 as a tool for the classification of the consequences of disease, injury, and disorder, and for analysis of health-related issues.

context in which disability is addressed, ignored, or exacerbated. General fiscal and economic policies, as well as more specific policies on employment, delivery and financing of health care, income support, transportation, social services, telecommunications, institutionalization, education, and long-term care are critical factors influencing disability and disabled persons. Their frequent inconsistencies, contradictions, and oversights can inhibit the attainment of personal and social goals for persons with disabilities.

Research Management

The new paradigm requires new models for the management of the research enterprise that include stakeholder participation, interdisciplinary and collaborative efforts, more large-scale and longitudinal research, and new research methodologies to conduct meaningful studies in the emerging policy environments. Training in disability and rehabilitation research must be expanded to include disciplines such as architecture and business. There will be new venues for the conduct of research, and a need for validated methodologies to conduct research on dynamic person-environment interactions and under constricted circumstances. Through training programs, the disability and rehabilitation research field also should work to increase the number of disabled and minority researchers.

The role of disabled consumers in research under the new paradigm, as well as in policy and services, is proactive and participative. Consumers have a role in shaping their environments and in managing the supports and services they require. Research must be more inclusive and participatory, involving not only consumers but also other stakeholders in understanding and interpreting research, in disseminating and applying research findings, and in planning, conducting, and evaluating research. Consumer satisfaction with research as well as services will be subject to assessment.

Moreover, interdisciplinary and collaborative research are important for explicating the multidimensional qualities of disability. It is only through research coordination and collaboration that the findings of basic research can be translated into the knowledge base of disability research.

Regardless of its auspices, research is a cumulative and integrative process; new knowledge comes from many sources, often in response to concerted pursuit, but also sometimes serendipitously. Research is often slow-moving and always painstaking; one of the ironies of the research effort is that a disproved hypothesis may constitute a successful project, particularly if it diverts the time and resources of others from an unfruitful direction. As one participant in the planning process put it, ''sometimes the new questions you stimulate are more important than the ones you answer in your research project.'' NIDRR is pleased to have collaborated with many other Federal and private agencies that sponsor various aspects of disability and rehabilitation research, and is committed to making research an inclusive, collaborative, and coordinated undertaking.

Organization of the Plan

This introductory chapter has set the framework for understanding NIDRR's mission and approach. After the next chapter, ''Dimensions of Disability,'' the Plan will discuss, in Section Two, an agenda for research that provides opportunities for leadership and innovation. NIDRR will implement this research agenda in conjunction with excellent management strategies, a dynamic program of knowledge dissemination, and a vigorous effort to build capacity of the field through training researchers and users of research. Section Three will focus on these activities.

NIDRR intends this five-year research Plan to balance the competing demands of consumer relevance and scientific rigor, and to present an agenda for research that is responsive, scientifically sound, and accountable, and which makes a contribution to the refinement of the Nation's science and technology policy.

Chapter 2: Dimensions of Disability

''Policy issues at the forefront of the disability agenda require accurate data, routinely repeated measures, sophisticated analysis, and broad dissemination'' (National Council on Disability, Action Steps for Changes to Federal Disability Data Collection Activities, draft report, Sept. 19, 1997).

This chapter of the Plan presents NIDRR's operative definitions of disability, discusses several analytical frameworks for the categorization of disability, and highlights deficits in current definitions and data collection. The chapter then presents data about the prevalence and distribution of disability in the nation and includes selected demographic data related to the major NIDRR goals of independence, inclusion, and employment.

Definitions and Concepts of Disability and Disablement

The definition of an individual with a disability under which NIDRR operates is contained in the Rehabilitation Act of 1973, (Public Law 93–112) as amended, and is as follows: any person who (i) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment (29 U.S.C. 705(20)(B)). This definition is similar to those contained in the ADA and the Technology-Related Assistance for Individuals with Disabilities Act (Tech Act).

The impairments that lead to limitations in activities may be related to genetic conditions or to acquired diseases or traumas that may occur throughout the lifespan. The extent of disability, and the conditions associated with disability, are significant to individuals and their families, and to the Nation.

Prevailing definitions, based in statute and supporting program authorities, clearly do not reflect new paradigm concepts of disability. Nearly all definitions identify an individual as disabled based on a physical or mental impairment that limits the person's ability to perform an important activity. Note that the complementary possibility—that the individual is limited by a barrier in society or the environment—is never considered. This Plan suggests that it is useful to regard an individual with a disability as a person who requires an accommodation or intervention rather than as a person with a condition or impairment. This new approach derives from the interaction between personal variables and environmental conditions. Because accommodations can address person-centered factors as well as socio-environmental factors, a ''need for accommodation'' is a more adaptable concept for the new paradigm.

The various definitions of disability that have formed the basis for both program eligibility and survey data collection do not have explanatory power for research purposes. The field of disability research lacks a widely accepted conceptual foundation for the measurement of disability as well as consistent definitions for data collection. In recent years, however, a number of efforts to develop conceptual frameworks to organize information about disability have been initiated (see Table 2).

TABLE 2.—CONCEPTS IN MODELS OF DISABILITY

ICIDH	Nagi/1991 IOM	NCMRR
Disease—Something abnormal within the individual; etiology gives rise to change in structure and functioning of the body.	Active pathology—Interruption or interference of normal bodily processes or structures.	Pathophysiology—Interruption or interference with normal physiological and developmental processes or structure.
Impairment—Any loss or abnormality of psychological, physiological, or anatomical structure or function at the organ level.	Impairment—Anatomical, physiological, mental or emotional abnormalities or loss.	Impairment—Loss or abnormalities of cognitive, emotional, physiological, or anatomical structure or function, including losses or abnormalities, not those attributable to the initial pathophysiology.
Disability—Any restriction or lack (resulting from an impairment) of ability to perform an activity in the manner or range considered normal for a human being.	Functional limitation—Restriction or lack of ability to perform an action or activity in the manner or within the range considered normal that results from impairment.	Functional limitation—Restriction or lack of ability to perform an action in the manner or within the range consistent with the parts of an organ or organ system.
Handicap—A disadvantage resulting from an impairment or disability that limits or prevents fulfillment of a normal role depending on age, sex, and sociocultural factors.	Disability—Inability or limitation in performing socially defined activities and roles expected of individuals within a social and physical environment.	Disability—Inability or limitation in performing tasks, activities, and roles to levels expected within the physical and social context.
		Societal limitation—Restrictions attributable to social policy and barriers (structural or attitudinal) which limits fulfillment of roles and denies access opportunities that are associated with full participation in society.

Note: Information in column 1 is from International Classification of Impairments, Disabilities, and Handicaps, by the World Health Organization, 1980, Geneva, Switzerland: Author. Information in column 2 is from Disability concepts Revisited: Implications for Prevention, by S.Z. Nagi, 1991, (p. 7) in Disability in America: Toward A National Agenda for Prevention by A.M. Pope and A.R. Tarlov (Eds.), 1991, Washington, DC: National Academy Press. Information in column 3 is from Research Plan for the National Center for Medical Rehabilitation Research, (p. 33), by the National Institute of Child Health and Human Development (1993) (NIH Publication No. 93–3509), Washington, DC: U.S. Government Printing Office.

Among these efforts are:

(1) The ICIDH, which was developed in 1980 by the WHO. The ICIDH was designed to provide a framework to organize information about the consequences of disease. An ongoing revision process is considering social, behavioral, and environmental factors to refine the concept of ''handicap;''

(2) The ''Nagi model'' (Nagi, 1991), which was presented by the Institute of Medicine (IOM) in its 1991 Disability in America report (Pope & Tarlov, 1991). The model was revised in the 1997 report entitled Enabling America (Brandt & Pope, 1997). The IOM (1997) also posits that disability is a function of the interaction of individuals with the social and physical environments. The revised Nagi model describes the environment as including the natural environment, the built environment, culture, the economic system, the political system, and psychological factors. The new model includes a state of ''no disabling condition.'' The state of disability is not included in this model because disability is not viewed as inherent in the person, but rather as a function of the interaction of the individual and the environment; and

(3) The schematic, adopted by the National Center for Medical Rehabilitation Research (NCMRR) in its Research Plan (1993, p. 33), which added the concept of societal limitation.

Continuum of Enablement-Disablement

The most widely used conceptual frameworks applied to disability and rehabilitation research have in common a continuum that progresses from some underlying etiology or disease to limitations in physical or mental function. These functional limitations, when combined with external or environmental conditions, may lead to some deficit in the performance of daily activities or expected social roles. In ''Enabling America,'' the IOM has urged the adoption of a new conceptual framework as a model for the enablement-disablement process (Brandt & Pope, 1997). This model has the advantage of identifying components of person-centered and environment-centered variables. The IOM framework identifies four categories of individual factors (person, biology, behavior, and resources) and nine categories of external environment factors (natural, culture, engineered environments, therapeutic modalities, health care delivery system, social institutions, macro-economy, policy and law, and resources and opportunities).

NIDRR research focuses on crucial areas of functional loss, disability, and socio-environmental aspects of the continuum. In keeping with the new paradigm, NIDRR emphasizes the importance of explicating the connection between the person and the environment, an interface that determines the disabling consequences of impairments and conditions. This study of the dynamic interaction among various individual and environmental variables requires NIDRR's continued and increased attention to shaping the structure, management, and capacity for research. Methodologies are needed, often in an interdisciplinary context, that can illuminate multiple facets of disablement and enablement from numerous perspectives.

Limitations in Federal Data Sources

The various Federal data collection efforts that assess the extent and distribution of disability in society are less than ideal for measuring the population that meets the NIDRR definition of an individual with a disability. These efforts generally can be categorized as either program data, which focus on the recipients of Federal benefit or service programs, or national surveys that focus on perceived limitations in activities caused by health conditions. Both program and survey data focus on the ''physical or mental impairment'' as the cause of the limitation. This is a reductionist approach that discounts social and environmental factors or assumes that these factors are subsumed within individual attributes.

The National Health Interview Survey (NHIS) and the Survey of Income and Program Participation (SIPP), are the two most widely used sources of survey data to describe the population of

individuals with disabilities. The data from the Disability Supplement to the NHIS currently is being analyzed by a number of researchers and will yield much-needed information on persons with disabilities. The Disability Supplement is the product of a 1994 to 1996 data collection effort that was the result of years of cooperative development by Federal agencies concerned with disability issues. While the Disability Supplement will have enormous value to its users, the Supplement, like other data sources, lacks any measures of the environmental factors (social or physical) that contribute to disablement, as well as any measures of interaction between person and environment.

Federal data collection efforts, including the Census, the NHIS, the SIPP, the Current Population Survey (CPS), and many other program-specific or topical data collections, not only fail to address important new concepts of disability, but also are limited in other respects. Sampling procedures may result in the exclusion of low-incidence disabilities and insufficient information about minority populations; self-reporting leads to underreporting many conditions; and survey formats frequently are inaccessible to persons with cognitive, sensory, or language limitations. Many Federal data collection efforts, as well as most private ones, do not routinely include information about persons with disability in their collection and reporting. Improvements in data quality and availability will be a key goal of NIDRR in this five-year Plan.

Particular problems exist in defining and quantifying disability in children. Many service programs rely on diagnostic categories for eligibility, and even those that have attempted a functional approach have had difficulty assessing the effect of context, expectations, transactions with adults, chronicity and duration, in determining the extent of disability among children. The Office of Special Education Programs (OSEP)—administers the Individuals with Disabilities Education Act (IDEA), which mandates that schools have a full range of services necessary to provide a free and appropriate public education for children with disabilities. According to OSEP's 1995–1996 IDEA annual report to Congress, 5.6 million disabled children (ages 3 to 21) received educational services. Approximately, one-half of these children were identified as having specific learning disabilities. Other high incidence disabilities included speech and language impairments, mental retardation, and serious emotional disturbances.

Because OSEP and other Department of Education offices focus their research on activities based in the educational system, including the development of curriculum and teaching methods and the training of teachers, NIDRR has directed its research on disabled children to aspects of life outside that arena. These issues include family-child relations; social relationships; community integration; medical technologies for replacing, or substituting for, function; accommodations; and supports to families. NIDRR research also has a role in addressing the critical problems of succeeding in the transitions from school to adult life in the community, and in the work and adult service systems. In a broader context, it is important to note that 5.5 percent of all American families contain one or more children with a disability (LaPlante, Carlson, Kaye, & Wenger, 1996). Children with disabilities are more likely to be found in low-income families and families headed by single mothers.

Prevalence of Disability

The importance of disability research is underscored by the frequency and widespread dispersion of disabilities in the U.S. population. The following data about disability were selected because of their relevance to NIDRR's specific priorities and to the overall objectives of this plan.

The 1994 NHIS estimated that 15 percent of the noninstitutionalized civilian population—some 38 million people—were limited in activity due to chronic conditions (Adams & Marano, 1995). The Institute of Medicine interpolated the NHIS data to indicate that 38 percent of disabilities were associated with mobility limitations, followed by chronic disease (32 percent); sensory limitations (8 percent); intellectual limitations (7 percent); and all other conditions (15 percent) (Pope & Tarlov, 1991). The SIPP identified 48.9 million persons who reported themselves as limited in performing functional activities or in fulfilling a socially defined role or task. Of these, 24.1 million persons were identified as having a ''severe disability'' (Kraus, Stoddard, & Gilmartin, 1996). Both surveys excluded persons in nursing homes or institutions, who would be expected to have a high rate of disability. Including that population through extrapolation has led to the commonly cited figures of 43 to 48 million Americans with disabilities.

Both the NHIS and SIPP focus on limitations in major life activities, due to a physical or mental condition, but also provide data on persons who are limited in or unable to perform activities of daily living (ADLs)—such as eating, bathing, dressing, toileting, or transferring—without assistance or devices, or to perform instrumental activities of daily living (IADLs)—such as basic home care, shopping, meal preparation, telephoning, and managing money. Approximately eight million people reported difficulty with ADLs, and approximately four million with one or more ADLs needed the assistance of another person (McNeil, 1993).

The range of these estimates—from approximately 4 million people who need help simply to sustain their lives to the nearly 40 million who report any kind of activity limitation—illustrates the danger in discussing the disabled population or its needs as a homogeneous group. More refined data are needed to assess the needs for medical and health care, vocational rehabilitation and employment assistance, supports for living in the community, and assistive technology.

Demographics of Disability: Age, Gender, Race, Education, Income, and Geography

Disability is distributed differently in the population according to characteristics of age, gender, race, and ethnicity, and both region and size of locality in which a person resides. Educational level is inversely correlated with the prevalence of disability. Poverty is a key factor both as a contributing cause and a result of disability. Table 3 presents NHIS data on sociodemographic correlates of activity limitations. This table indicates that disability is very likely linked to other social factors and reinforces the need to address disability in a broad context.

Emerging Universe of Disability

NIDRR has begun to focus on an ''emerging universe'' of disability, in which either the conditions associated with disability, their distribution in the population, or their causes and consequences, are substantially different from those in the traditional disability population.

TABLE 3.—DEGREE OF ACTIVITY LIMITATION DUE TO CHRONIC CONDITIONS, BY DEMOGRAPHIC CHARACTERISTICS: 1994

Characteristic	All persons (in thousands)	With activity limitation	Unable to carry on major activity (percent)	Limited in amount or kind of major activity (percent)	Limited, but not in major activity (percent)
All persons	259,634	15	4.6	5.7	4.7
Age:					
Under 18 years	70,025	6.7	0.7	4.2	1.8
18–44 years	108,178	10.3	3.2	3.9	3.1
45–64 years	50,405	22.6	9.2	7.9	5.5
65–69 years	9,685	36.7	16.7	11.9	7.3
70 years and older	21,340	38.9	8.1	12.6	19.3
Sex:					
Male	126,494	14.4	4.8	5.3	4.3
Female	133,139	15.7	4.4	6.1	5.2
Race:					
White	214.496	15.1	4.4	5.8	4.9
African American	33,035	16.3	6.3	6.2	3.8
Family Income:					
Under $10,000	23,363	28	11.2	9.9	6.9
$10,000–$19,999	37,271	21.1	7.3	7.7	6.2
$20,000–$34,999	54,171	14.8	4.1	6.0	4.7
$35,000 or more	100,302	9.4	1.9	3.9	3.6
Geographic Region:					
Northwest	50,610	14.3	4.3	5.6	4.3
Midwest	63,238	14.6	3.9	6.0	4.6
South	88,088	16.1	5.3	6.0	4.8
West	57,697	14.7	4.6	5.0	5.0
Place of Residence:					
Metropolitan statistical area (MSA)	203,079	14.3	4.4	5.5	4.5
Central city	79,510	15.8	5.4	5.9	4.5
Not central city	123,570	13.4	3.8	5.2	4.5
Not MSA	56,554	17.6	5.4	6.6	5.6

Note: From Tables 67–68 in Current Estimates from the National Health Interview Survey, 1994, Series 10, No. 193, by P. F. Adams and M.A. Marano, Hyattsville, MD: National Center for Health Statistics.

This emerging universe is identified with new disabling conditions; new causes for impairments; differential distributions within the population; increased frequency of some impairments, including those associated with the aging of the population; and different consequences of disability, particularly as related to social-environmental factors, lifespan issues, and projected demands for services and supports.

Researchers have identified a ''new morbidity'' (Baumeister, Kupstas, & Woodley-Zanthos, 1993) in which the cluster of factors associated with poverty—such as poor education, poor medical care, low birthweight babies, lack of prenatal care, substance abuse, interpersonal violence, isolation, occupational risks, and exposure to environmental hazards—have a high correlation with the existence of impairments, disabilities, and exacerbated consequences of disabilities. For example, the leading cause of mental retardation is no longer RH-factor incompatibility, but may be related to any factor associated with high-risk births, which are more common among low-income mothers. Interpersonal violence accounts for the rising incidence of certain conditions, especially spinal cord injury and traumatic brain injury, among inner-city minority populations. These developments have enormous implications for research problems to be addressed and future demands for various types of services.

New illnesses or conditions have emerged in recent years; some, but by no means all, are poverty-related. AIDS, Attention Deficit Hyperactivity Disorder (ADHD), violence-induced neurological damage, repetitive motion syndromes, childhood asthma, drug addiction, and environmental illnesses are all either relatively new conditions or ones of increasing prevalence and severity in society. Additionally, the aging of the population, given the higher rates of many disabilities among older persons, is another demographic factor that will influence issues to be addressed by applied research.

As new causes of disabilities emerge, the new paradigm of disability clearly provides a progressive approach to successfully addressing environmental and social barriers for people with disabilities. These new issues have implications not only for disability research and services, but also for public health and prevention activities.

Disability, Employment, and Independent Living

Because of NIDRR's statutory concern with improving employment outcomes for persons with disabilities, it is valuable to present a brief overview of the employment status of persons with disabilities.

LaPlante & Carlson (1996) report that 19 million Americans with an impairment or health problem (ages 18–69) were unable to work or limited in the amount or type of work they could According to the CPS, about 10 percent of the population between 16 and 64 had work limitations (different age ranges reflect changing concepts of ''working age'') (LaPlante, Kennedy, Kay, & Wenzer, 1996). Back disorders, heart disease, and arthritis were frequently reported as major causes of work disability (LaPlante & Carlson, 1996). However, mental illness is one of the most work-disabling conditions; data showed that among adults with serious mental illness (an estimated 3.3 million persons), 29 percent were reported to be unable to work or limited (18 percent) in their ability to work

because of their mental disorder (Barker, Manderscheid, Hendershot, Jack, Schoenborn, & Goldstrom, 1992).

While the presence of any disability reduces the likelihood of employment, the effect is closely tied to the severity of the disability. The SIPP estimates that among persons 21 to 64 years old, the employment rate was 81 percent for persons with no disability, 67 percent for persons with a disability that was not severe, and 23 percent for persons with a severe disability (McNeil, 1993). Only 21 percent of persons needing personal assistance with ADLs or IADLs were employed (U.S. Bureau of the Census, 1998). The unemployment rate for persons with disabilities, which counts only those persons in the labor force, was 12.6 percent, more than twice the unemployment rate of nondisabled Americans (Stoddard, Jans, Ripple, & Kraus, 1998).

Disabled persons who work full time typically earn less than nondisabled workers with the earnings gap widening with age and severity of disability. Persons with disabilities who do not work may qualify for income support payments under Social Security Disability Insurance (SSDI) (if they have a work history) or Supplemental Security Income (SSI). As of January 1996, 5 million persons received SSDI benefits, including 4.2 million disabled workers, 686,300 disabled adult children, and 173,800 disabled widows and widowers (Social Security Administration, 1996). A 1993 report cited mental disorders as the most frequent cause of disability (35 percent), followed by musculoskeletal, circulatory, and nervous system disorders (Social Security Administration, 1993).

At the end of 1993, about 3.8 million persons under age 65 received SSI benefits due to disability and poverty (Kochhar & Scott, 1995). More than one-half of these persons had either mental retardation or mental illness. The Social Security Administration (SSA) has noted a sharp increase in the number of disabled SSI recipients, an increasing proportion with mental illness, and a growing number who enter the rolls as children and remain for long periods (Kochhar & Scott, 1995).

Many of these increases in both SSDI and SSI programs can be attributed to program changes (such as different eligibility requirements and outreach), to a shifting from other income support categories, to changes in stability of employment and private health insurance, and to the bundling of health insurance coverage with income supports. Eligibility for public health insurance is generally tied to the receipt of income transfer payments from a public income support program.

Data elements about residential status, family composition, and need for personal assistance services illuminate some of the characteristics of the disabled population. Of the estimated 48.9 million persons with disabilities from the SIPP data, 32.5 million own their own homes and 16.4 million rent (McNeil, 1993). An estimated 9.8 million live alone and over 27 million persons with disabilities are married. An estimated 8.3 million individuals with disabilities live in a household with their spouse and children under 18 years of age, while an estimated 1.9 million are single parents with disabilities.

An estimated 20.3 million families, or 29.2 percent of all 69.6 million families in the United States have at least one member with a disability (as measured by having an activity limitation). This rate for families is much higher than the rate of individuals having a disability. Further, there appears to be a clustering of people with disabilities in families and households, with a much higher than expected likelihood of both adult partners having disabilities and a greater than average chance that children with disabilities will live with one or more parents with disabilities. Families headed by adults with disabilities are more likely to live in poverty or to be dependent on public income support programs.

Conclusion

This chapter of the Plan highlighted some important disability statistics that illustrate the scope of disability in the United States. Throughout the Plan, significant data also are interspersed about use of assistive technology, access to health care, labor force participation, and community living. In addition, Chapter Seven addresses the need for future research in disability data collection.

Overall, current data on disabilities provide both a picture for concern and a cause for optimism. People with disabilities tend to have lower than average educational levels, low income levels, and high unemployment rates, especially for people with severe disabilities. Moreover, the relationship between disability and poverty tends to be bi-directional, with the conditions of poverty creating a high risk for disability and disability itself leading to poverty. At the same time, it is clear that more individuals with disabilities are completing high school and college educations, and education is closely correlated with employment and independence. Increasingly, individuals with disabilities are living in the community, marrying, and raising families. These individuals may receive increased attention from businesses as they constitute a market for accessible housing and adaptive devices, recreation, adult education, accommodated travel, health care, and other services.

It is also true that, while the presence of a disability may have deleterious effects on individuals and families, society increasingly is able to assist persons with disabilities in their need for equity and access through new discoveries in research, improved service methods, and informed policy decisions.

Section Two: NIDRR Research Agenda

Chapter 3: Employment Outcomes

''With the ADA, we began a transformation of the proverbial ladder of success for some Americans into a ramp of opportunity for all Americans. Yet, * * * (so many) Americans with severe disabilities are still unemployed, * * * (making it) clear we still have many steps to take before people with disabilities have full access to the American dream'' (Tony Coelho, Chairman, President's Committee on Employment of People with Disabilities, Keynote Address ''Employment Post the Americans with Disabilities Act,'' National Press Club, Washington, DC, November 17, 1997).

Overview

Unemployment and under-employment among working-age Americans with disabilities are ongoing, and seemingly intractable, problems. Data from the Census Bureau on the labor force status of persons ages 16 to 64 in fiscal year 1996 highlight the magnitude of this problem. While four-fifths of working-age Americans are in the labor force and more than three-fourths are working full time, less than one-third of persons with disabilities are in the labor force, and fewer than one-quarter are working full time. Fully two-thirds of working-age persons with disabilities are not in the labor force; other research suggests that a substantial portion of this staggering figure can be attributed to disincentives inherent in social and health insurance policies, to discouragement, and to lack of physical access to jobs. Finally, among those in the labor force, the unemployment rate for disabled persons is more than double that of persons without disabilities (12.6 percent versus 5.7 percent). Disparities in employment rates and earnings are even greater for disabled individuals from minority

backgrounds and those with the most significant disabilities (Stoddard, Jans, Ripple, & Kraus, 1998).

Economy and Labor Force Issues

Several emerging characteristics of the nation's labor market exacerbate the difficulties experienced by persons with disabilities in their attempts to gain employment and even in their motivation to seek employment. Downsizing, for example, has led to a reduction in the percentage of the labor force with stable, long-term, benefits-carrying jobs; much of business and industry is moving to other configurations that fill their labor needs without requiring a long-term commitment on the part of the employer. The ''contingent'' workforce takes many forms, including on-call workers and those in temporary help agencies, workers provided by contract firms, and independent contractors paid wages or salaries directly from the company. Many of these jobs lack security and benefits, particularly health insurance, that most persons with disabilities require for participation in the labor force.

In addition, while many business spokespersons and educators point to the need for highly educated, highly skilled workers if the nation is to succeed in the increasingly competitive global economy, the reality is more complex. On the one hand, availability of jobs requiring specialized skills combined with rapid advances in technology may improve the employment prospects of persons with disabilities as well as other workers, through such work arrangements as telecommuting, and an expanding market for self-employment or small businesses. On the other hand, the labor market appears to be moving toward increasing bifurcation, with top-tier technocracy jobs for persons with sophisticated work skills, and lower-tier unskilled service and maintenance jobs for the less prepared.

Assisting individuals with significant disabilities in moving from dependency on public benefits or family support, or from episodic, poor-paying jobs, into stable jobs that will allow them to become self-supporting, is a complex challenge. This challenge involves a number of economic sectors, and service and support systems, and must include an examination of social policies. Providing appropriate assistance requires an extensive knowledge base encompassing economic trends, education and job training strategies, job development and placement techniques, workplace supports and accommodations, and empirical knowledge of the impact of social and health insurance policies on job-seeking behaviors.

State-Federal Vocational Rehabilitation Program

For the past 75 years, the primary source of publicly funded employment-related services to improve the employment status of disabled persons, especially those with significant disabilities, has been the State-Federal Vocational Rehabilitation (VR) service program, currently authorized under the Rehabilitation Act of 1973, as amended, most recently in 1998. Funded at $2.2 billion in Fiscal Year 1998 in Federal funds and a 22 percent State match for a total of about $2.7 billion annually, the program is implemented primarily as a case management system at the State and local levels. The rehabilitation counselors negotiate, on behalf of and in consultation with the consumer, the purchase of a package of services, such as medical interventions, and supports (e.g., assistive technology and licensure) that will facilitate achievement of employment outcomes.

As noted by OSERS Assistant Secretary Judith Heumann in recent testimony to Congress, ''As a group, persons who achieve an employment outcome as a result of vocational rehabilitation services each year show notable gains in their economic status,'' (Barriers Preventing Social Security Recipients from Returning to Work, 1997). The percentage of persons with disabilities reporting their income as their primary source of support increased from 18 percent, at the time of application to the VR program, to 82 percent at the time of exit from the program (Barriers Preventing Social Security Recipients from Returning to Work, 1997). The percentage with earned income of any kind increased from 22 percent at entry to 92 percent at exit. The percentage working at or above minimum wage rose from 15 to 80 percent.

Nevertheless, Federal policymakers, consumers, advocates, and rehabilitation professionals remain concerned that persons with disabilities often are excluded from full participation in the nation's labor force. In the past several years, for example, SSA has experienced a very large increase in the number of persons qualifying for SSI and SSDI, and the public costs of these cash benefits are substantially increased by the addition of public support for associated Medicare/Medicaid programs. Further, neither SSA nor the VR system has experienced notable success in returning beneficiaries to the labor force. The VR system, while accepting SSI/SSDI beneficiaries for services at a proportionally higher rate than nonbeneficiaries, typically has less success with this group, that is, relatively fewer SSI/SSDI beneficiaries than nonbeneficiaries achieve an employment outcome as a result of VR services.

One of the major changes in the employment sector over the past three decades is the diversification of the laborforce. Workers with disabilities are among the previously underrepresented groups entering the labor market in increasing numbers with raised expectations and legal protections for equal opportunity in employment. Even within the disability community, there is great diversity in the subgroups who have obtained or desire employment. It is very important that future research and service programs demonstrate, in their design and implementation, appropriate sensitivity to and adequate representation of the range of cultural and disability subgroups. This issue should be examined not merely as a response to the current consciousness about multiculturalism but because the basic, implicit foundations of vocational rehabilitation counseling were developed for a clientele that, in terms of demographic characteristics, work-related experience, and service needs, was quite different from today's rehabilitation customers. Specifically, vocational rehabilitation techniques were originally imported from the earlier established disciplines of secondary vocational education and college counseling psychology. Recipients of services from these disciplines tended to have mainstream acculturation and tolerance for the competitive standards, verbal testing, and guidance common in academic environments. Given the cognitively compromised or socially disadvantaged status of many of today's clients, additional scrutiny of the appropriateness and adequacy of the strategies and tools for vocational rehabilitation assessment, counseling, and training is imperative. Rehabilitation counselors need new marketing strategies to reach out to prospective employers to develop job opportunities for this diverse population of persons with disabilities.

Community-Based Employment Services

NIDRR's research agenda concerning employment addresses, but is not limited to, the State-Federal VR program administered by NIDRR's sister agency, the Rehabilitation Services Administration (RSA). While the VR

program plays an important role, there is a wide range of other Federal, State, and local funding sources for, and providers of, employment programs. These include approximately 7,000 community-based rehabilitation programs (CRPs), which serve about 800,000 persons daily, and are funded by VR and/or such diverse sources as the Job Training Partnership Act (JTPA), Worker's Compensation, or private insurance. Legislation such as the Workforce Investment Act and the Workforce Consolidation Act further diversifies the sources of support.

The role of community rehabilitation programs in the overall service delivery system may be enhanced even further if Federal employment programs devolve to States and communities and if the intent to increase consumer choice in the selection of service providers becomes more widely implemented. To respond to these developments, community rehabilitation programs must be prepared to offer a full range of vocational services to an increasingly heterogeneous consumer population. Moreover, as return-to-work programs that base provider payments on successful consumer outcomes are implemented, new relationships between service providers and funding sources may emerge over the next few years. These new relationships will require that community rehabilitation programs adapt their current structure and operations in significant ways.

A number of questions about how these changes may potentially influence and impact the service delivery of community rehabilitation programs are yet unanswered. For instance, the efficacy of different models designed to maximize competitive employment outcomes for persons with significant disabilities or with specific types of disabilities is unknown. In addition, the impact of consumer choice on service delivery models is unknown. Finally, whether new funding mechanisms will promote increased competition and innovation in service delivery by community rehabilitation programs is a major question. Gaining knowledge in these important areas will allow validation of the assumptions upon which pending reforms are predicated, and the shaping of the future direction of initiatives to increase the numbers of persons with significant disabilities who obtain and retain meaningful employment.

Employer Roles and Workplace Supports

Employers play a key role in deciding employment outcomes for disabled persons through establishment of policies for recruitment, screening, hiring, training, promoting, accommodating, and retaining disabled individuals in the workforce. The provisions of Title I of the ADA prohibit discrimination against qualified job applicants with disabilities. Applicants are considered qualified if they can perform the essential functions of a job with or without reasonable accommodations. This statute creates duties for employers by requiring them to make the employment process accessible, provide reasonable accommodations, and focus on essential functions of jobs. These employer responsibilities cover all aspects of the pre-employment and post-employment phases. Through the requirements of Workers' Compensation laws, bargaining unit agreements, and insurance provisions, employers have additional obligations to employees who become disabled.

Strategies to assist employers in meeting workplace obligations include disability management and workplace supports. Disability management is a term used to describe an array of support mechanisms and benefits that employers use to maintain employment for disabled workers. Workplace supports are programs or interventions provided in the workplace to enable persons with disabilities to be successful in securing and maintaining employment. Some workplace supports may be provided through formal mechanisms established by vocational rehabilitation programs, such as supported employment, in which a job coach who works with the employee provides on-site assistance. Other supports include accommodations such as job restructuring, worksite adaptations, and improved accessibility.

Transition From School To Work

NIDRR, along with RSA, OSEP, and the Department of Education as a whole, has a particular interest in the process by which disabled students transition into a world of productive work, as opposed to settling into a lifetime of dependency. This is a critical concern because the transition period presents a distinct opportunity to help students embark on a career, thus enhancing their community integration, independence, and quality of life. The transition into work occurs at many points: prevocational experiences, on-the-job training, secondary vocational education or other secondary education programs, and postsecondary education at technical institutions, community colleges, or universities. These various transition points present opportunities for research on strategies for success in transferring from a learning environment to a work environment.

Research is ongoing regarding issues of postsecondary education for persons with disabilities. This research shows that youth with disabilities face tremendous difficulties in accessing postsecondary education and making the transition from school to work. Most of the nation's institutions of higher education offer support services to students with disabilities; however, this is less certain for other types of postsecondary schools. When offered, services vary widely and may include customized academic accommodation, adaptive equipment, case management and coordination, advocacy, and counseling. A number of issues have been raised in relation to delivery of these services. Among these are issues of disclosure, accessibility of a range of services, and extent and type of transition services needed to move from school to work.

Directions of Future Employment-Related Research

Given the magnitude of changes in the nature and structure of the world of work and possible changes in the characteristics of the disabled population, NIDRR's employment-related research agenda for the next five years must extend beyond prior research efforts to discover mechanisms that will make the labor market more amenable to full employment for persons with disabilities. That research agenda must incorporate economic research, service delivery research, and policy research, and most importantly, must relate to the context in which employment outcomes are determined. Among the key policy issues that will affect the evolution of this agenda are SSA reform; restructured funding and payment mechanisms, including the use of vouchers; the impact of workforce consolidation; radical restructuring of employment training services at State and local levels; employment-related needs of unserved and underserved groups; linkage of health insurance benefits to either jobs or benefit programs; and transition from school to work among youth with disabilities.

An important focus for research will be changes in the environment (e.g., in the workplace, information technology, and telecommunications and transportation systems) that will make work more accessible, along with strategies for assisting individuals to achieve both the skill levels and the flexibility required for full labor force participation in the 21st century. Finally, as a departure from NIDRR's historical emphasis on the service

system and the quality of services, the agenda calls for examination of economic issues (including benefits and costs of various incentive plans) associated with employment of persons with disabilities, labor force projections and analyses, and an increased understanding of employer roles, perspectives, and motivational systems.

The purpose of NIDRR's research in the area of employment is to:

(1) Assess the impact of economic policy and labor market trends on the employment outcomes of persons with disabilities;

(2) Improve the effectiveness of community-based employment service programs;

(3) Improve the effectiveness of State employment service systems;

(4) Evaluate the contribution of employer practices and workplace supports to the employment outcomes of persons with disabilities; and

(5) Improve school-to-work transition outcomes.

Research Priorities for Employment

Economic Policy and Labor Market Trends

As noted earlier in this chapter, NIDRR recognizes that the impact of macroeconomic trends on employment of persons with disabilities, and public policy responses to these trends is a large and complex topic, one that will require increased policy research attention in the next 5 to 10 years. A coordinated research effort must examine such labor market demand issues as the changing structure of the workforce, skill requirements, and recruitment channels, in addition to issues on the supply side such as job preparation and skills, competencies, demographics, and incentives and disincentives to work. Specific research priorities include:

(1) Analysis of the implications for employment outcomes of cross-agency and multiagency developments and initiatives, including welfare reform, workforce consolidation, SSA reform, Medicare/Medicaid changes, The Department of Education-Department of Labor school-to-work program, and Executive Order No. 13078 (1998);

(2) Analysis of the dissonance between the ADA concept of ''essential elements'' of a job and the new employer emphasis on core competencies, flexibility, and work teams and the impact on job acquisition and retention; and

(3) Analysis of the impact of labor market changes on employment of persons with disabilities.

Community-Based Employment Service Programs

Proposed restructuring of the financing of employment-related services for individuals with disabilities posits a major role for new or different service delivery arrangements. The capacity of the existing provider system, represented in part by the 7,000 community-based rehabilitation programs (CRPs) in the nation, to assume this role requires thorough investigation. Specific research priorities include:

(1) Evaluation of provisions for accountability and control and protections for difficult-to-serve individuals; analysis of the cost and benefit of services, and measurement of the quality of employment outcomes for consumers with disabilities;

(2) Analysis of the extent to which services that CRPs deliver to VR consumers (about one-third of services received by VR consumers come from CRPs) differ in quality, quantity, costs, or outcomes from those provided to consumers of other financing systems (e.g., Workers' Compensation or private insurance); and

(3) Evaluation of the potential of this community-based employment system to assume greater responsibility for service delivery under block grants, in consolidation into umbrella agencies, and in ''one-stop shop'' service configurations.

State Service Systems

Amendments to the Rehabilitation Act in 1992 and 1998 called for a number of management and service delivery changes in the State-Federal VR program. These include expanded consumer choice regarding vocational goals, services, and service providers; implementation of performance standards and indicators to ensure accountability and improvement in the system; a greater role for consumer direction through the vehicle of State Rehabilitation Advisory Councils; and changes in the eligibility determination process that include presumptive eligibility and order of selection procedures, among others. Order of selection requires that individuals with the most significant disabilities receive priority for services, significantly altering the characteristics of VR clientele. Specific research priorities include:

(1) Analysis of the impact of management and service delivery changes in the State-Federal VR program on the quality and outcomes of VR services;

(2) Evaluation of the impact of professionalization of the rehabilitation counselor workforce;

(3) Assessment of the efficacy of various methods of case management;

(4) Development and evaluation of outcome measures for VR consumers under one-stop configurations;

(5) Identification and evaluation of marketing strategies to assist VR counselors in helping persons with disabilities obtain jobs in a variety of employer settings;

(6) Assessment of interagency coordination in delivery of services to multiagency consumers; and

(7) Assessment of the applicability of traditional VR approaches for minority and new universe populations.

Employer and Workplace Issues

One area that has received insufficient attention in past research is the workplace, including both the physical environment (as represented by job site accommodations, technological aids, and the like) and the ''social environment'' comprising roles of co-workers, supervisors, and employers. Specific research priorities include:

(1) Investigation of employer hiring and promotion practices;

(2) Evaluation of models of collaboration between rehabilitation professionals and employers;

(3) Development and evaluation of cost-effective strategies for improving the receptivity of the workplace environment to workers with disabilities;

(4) Development and evaluation of strategies for encouraging employers to hire disabled workers (e.g., tax credits, arrangements regarding partial support for medical benefits);

(5) Evaluation of the impact of new structures of work, including telecommuting, flexible hours, and self-employment on employment outcomes;

(6) Identification and evaluation of disability management practices by which employers can assist workers who acquire, or aggravate disabilities to remain employed, transfer employment, or remain in the workforce and out of public benefit programs; and

(7) Analysis of the role and potential of the ADA in increasing job opportunities.

School-to-Work Transition

Moving into employment from educational institutions is one of the most important transitions that people make during their lifetimes. The academic levels at which transitions to the labor market occur include secondary school, secondary school completion, and completion of some

level of post-secondary education. In recent years, the U.S. Departments of Education and Labor have collaborated to support the development of state and local systems whose broad mission is to prepare youth for success in the global marketplace. Specific research priorities include:

(1) Determination of the impact of these state and local educational system initiatives on work opportunities for the nation's youth with disabilities;

(2) Evaluation of the extent to which school reform initiatives, such as academic-vocational integration, Tech Prep, career academies, work-based learning, and rigorous preparation in terms of critical thinking and communication skills, are accessible to and effective with youth who have disabilities;

(3) Identification of systemic and environmental barriers to full labor force participation;

(4) Assessment of whether innovations in school-to-work practices are accessible to youth with disabilities, and determination of the impact of these practices on employment outcomes; and

(5) Assessment of the efficacy of employment and transition services for youth from diverse backgrounds and new disability groups.

Future employment research will provide information to develop new VR approaches for helping disabled individuals become competitive in the changing, global labor market. These new methods will focus on provision of culturally relevant services for clients, attainment of competitive job skills by clients, and the application of accommodation in the workplace.

Chapter 4: Health and Function

''To be healthy does not mean to be free of disease; it means that you can function, do what you want to do, and become what you want to become'' (Rene Jules Dubos, 1901–1982).

Overview

Maximizing health and function is critical to maintaining independence for persons with disabilities. Health care for persons with disabilities encompasses access to care for routine health problems, participation in health promotion and wellness activities, and access to appropriate specialty care, including medical rehabilitation. Medical rehabilitation is the systematic application of modalities, therapies, and techniques to restore, improve, or replace impaired human functioning. It also encompasses biomedical engineering, that is, the use of engineering principles and techniques and biological knowledge to advance the functional ability of persons with disabilities.

Health care and medical rehabilitation services operate largely within the constraints imposed by market forces and government regulations. In recent years, significant changes have occurred in health care delivery and reimbursement. Various forms of managed care have become the predominant mode of organizing and delivering health care in much of the private sector. Medicaid and Medicare also have adopted managed care strategies for providing health care to many recipients. In theory, managed care uses case coordination to contain costs by limiting access to ''unnecessary'' health care, particularly specialty services and hospitalization. Individuals with disabilities have expressed concern that managed care approaches may limit their access to medical rehabilitation specialists, goods, and services. In addition to a market-driven shift to managed care, other related changes have occurred, including shortened length of stays in inpatient rehabilitation facilities and the development of subacute rehabilitation providers. Considerable consolidation also has occurred within the medical rehabilitation industry and has further affected the availability and delivery of services. There also has been a new emphasis on developing performance measures that incorporate concepts of quality, functional outcomes, and consumer satisfaction. These measures are being used to guide purchasing and accrediting decisions within the health care system.

During the next five years, NIDRR plans to fund research in a number of broad areas that link health status and functional outcomes to health care and medical rehabilitation. In addition, NIDRR will support research to continue development of new treatments and delivery mechanisms to meet the rehabilitation, functional restoration, and health maintenance needs of individuals with disabilities. This research will occur at the individual and the delivery system levels. In this section, the discussion of general health care and medical rehabilitation will address issues at both levels.

Health Care

The goal of health care for individuals with disabilities is attaining and maintaining health and decreasing rates of occurrence of secondary conditions of disability. Individuals with disabilities use more health care services, accumulate more hospital days, and incur higher per capita medical expenditures than do nondisabled persons. Persons with no activity limitations reported approximately four physician contacts per year; this figure was doubled for those who had some activity limitation, was five times as high for those unable to perform major life activities, and was seven times as great for those needing help with instrumental activities of daily living (IADLs) (LaPlante, 1993). Understanding the relationship between disability and health has implications for the public health agenda and the application of primary disease prevention strategies to the health of persons with disabilities.

In the past, the health needs of persons with disabilities often have been conflated with medical rehabilitation needs. The recognition that persons with disabilities require routine health care or access to health maintenance and wellness services is relatively new. How best to meet these needs requires substantial new research. At the individual level, persons with disabilities need providers and interventions that focus on their overall health, taking disability and environmental factors into consideration. Concern about the health of the whole person is the focus at this level, in recognition that an individual is more than a disability and deserves access to the health services generally available to the nondisabled population. At the system level, study of the organization and financing of health services must include analysis of impacts on persons with disabilities. Ameliorating the primary condition, preventing secondary conditions and co-morbidities, maximizing independence and community integration, and examining the impact of physical barriers and societal attitudes on access to health and medical rehabilitation services are critical issues at each level of focus.

Health Care at the Individual Level

Although persons with disabilities have higher health care utilization rates than the general population, having a disability does not mean that a person is ill. People with disabilities increasingly are demanding information about and access to programs and services aimed at promoting their overall health, including access to routine health care, preventive care, and wellness activities. This includes primary care and, for women, access to gynecological care. For children, this means access to appropriate pediatric care. In clinical settings, these demands require development of disability-sensitive protocols for proper nutrition, exercise, health screening, and

treatment of nondisability-related illnesses and conditions. NIDRR is committed to supporting research to improve the overall health of persons with disabilities.

Health Care at the Systems Level

Persons with disabilities must have access to, and satisfaction with, an integrated continuum of health care services, including primary care and health maintenance services, specialty care, medical rehabilitation, long-term care, and health promotion programs. Models for organizing, delivering, and financing these services must accommodate an overall health care system that is undergoing tremendous change. Issues of gatekeeper roles, carve-outs, risk-adjusted rate-setting, and service mix are factors for assessment in a context of managed care approaches that balance care coordination with cost control strategies. At issue for all people is whether cost control strategies result in barriers to needed care; and, for persons with disabilities, whether access to specialty care, particularly medical rehabilitation services, is limited. In the current cost-cutting and restrictive climate, it is important to assure that new service configurations preserve equity for persons with disabilities by providing for their unique needs.

Medical Rehabilitation

Medical rehabilitation addresses both the primary disability and secondary conditions evolving from the initial impairment or disability. Medical rehabilitation also teaches the individual to overcome the barriers in the environment. Medical rehabilitation includes medical and bioengineering interventions, therapeutic modalities, and community and family interventions.

Medical Rehabilitation at the Individual Level

NIDRR-funded research has improved medical rehabilitation treatment in areas such as spinal cord injury, traumatic brain injury, stroke, and other leading causes of disability. This research must be expanded to include emerging disabilities. Of special concern are new causes of disability such as violence, which has emerged in recent years as a significant precipitator for new disability conditions. In addition, future medical rehabilitation research must be sensitive to cultural difference and must recognize the impact of an individual's environment on functional outcomes. Another important research focus will be examining how technological improvements enhance the ability of biomedical engineering to help people with disabilities regain, maintain, or replace functional ability.

Additionally, an urgent need exists for the development of more effective outcomes measurement tools to test the usefulness of new medical rehabilitation interventions and products. These measurement tools must assess the individual's response to medical rehabilitation interventions and account for technology that enhances mobility, independence, and quality of life. Outcomes must be measured not just for the duration of treatment but also over the long term.

Another issue of continued importance to medical rehabilitation is the prevention and treatment of secondary conditions. Secondary conditions result directly from the primary disabling condition and may have significant effects on the health and function of persons with disabilities. Examples of secondary conditions may include depression, bladder and skin problems, respiratory problems, contractures or spasticity, fatigue, joint deterioration, or memory loss. Other health conditions such as cardiac problems, autoimmune diseases, or cancer may not always derive directly from the original disability, but may require special preventive efforts or care interventions because of a preexisting disability.

Medical Rehabilitation at the Systems Level

Cost containment strategies inherent in managed care may constrain access to medical rehabilitation. Thus, it is more important than ever to demonstrate the cost effectiveness of treatments. Research on medical rehabilitation outcomes is critical to establishing the need for, and assuring access to, medical rehabilitation within the health care delivery system. Previously, NIDRR has initiated research activities to develop methods for measuring function and assessing rehabilitation outcomes, and for measuring the cost and effectiveness of various rehabilitation modalities and delivery mechanisms. These areas will continue to be important foci of NIDRR's future medical research program. Research must continue to assess the impact of changes at the system level on the rehabilitation outcomes of individuals. In addition, providing care in nonacute settings requires development of additional capacity that includes training practitioners for more independent work in the community. NIDRR research must contribute to building this new capacity.

The purpose of NIDRR's research in the area of health care and medical rehabilitation is to:

(1) Identify and evaluate effective models of health care for persons with disabilities;

(2) Develop models to promote health and wellness for persons with disabilities;

(3) Examine the impact of changes in the health care delivery system on access to care;

(4) Evaluate medical rehabilitation interventions that maximize physical function for individuals with disabilities, taking into account aging, environment, emerging disabilities, and changes in the health services delivery system;

(5) Identify and evaluate medical rehabilitation interventions that will help disabled individuals maintain health, through prevention and amelioration of secondary conditions and co-morbidities, and through education;

(6) Improve delivery of medical rehabilitation services to persons with disabilities; and

(7) Evaluate the health and medical rehabilitation needs of persons whose impairments are attributed to newly recognized causes or whose conditions are newly recognized as disabilities, for example, disability relating to acts of violence or to conditions of children with chronic diseases like asthma.

Future Research Priorities for Health Care and Medical Rehabilitation

Research on Effective Methods of Providing a Continuum of Care, Including Primary Care and Long-Term Care, to Persons With Disabilities

In recent years, a number of different models of providing routine health care for persons with disabilities have emerged. For example, there are medical rehabilitation programs that have developed primary care clinics; and there are other programs where primary care providers have added medical rehabilitation consultants to advise them on care of persons with disabilities. The efficacy of these models is not yet known, especially their impact on the overall well-being of their consumers. There has been some research on long-term care models, especially those that provide community-based services, including personal assistance; however, research questions remain regarding optimal models of long-term care. Specific priorities include:

(1) Identification of effective models of primary and long-term care across disability populations including emerging disability groups;

(2) Evaluation of the impact of primary and long-term care service delivery models on independence, community integration, and overall health outcomes, including occurrence of secondary conditions and co-morbidities; and

(3) Collection and analysis of longitudinal data on health care utilization by persons with disabilities, to identify trends, outcomes, and consumer satisfaction.

Research on Application of Wellness and Health Promotion Strategies

NIDRR will support research to develop wellness and health promotion strategies, incorporating all disability types and all age groups. Specific research priorities include:

(1) Identification and evaluation of models to promote health and wellness for persons with disabilities in mainstream settings where possible. These will include nutrition, exercise, disease prevention, and other health promotion strategies. A particular focus will be placed on prevention and treatment of secondary conditions and on the needs of emerging disability populations, including persons aging with a disability;

(2) Evaluation of the impact of health status on independence, community integration, quality of life, and health care expenditures; and

(3) Development of guidelines that establish protocols for reaching or maintaining appropriate levels of fitness for persons with varying functional abilities.

Research on the Impact of the Evolving Health Service Delivery System on Access to Health and Medical Rehabilitation Services

NIDRR anticipates that the health service delivery system will continue to evolve as the marketplace responds to rising costs and as policymakers respond to public concerns about access to care. Specific research priorities include:

(1) Evaluation of the impact of changes at the health system level, for example, financing and regulatory changes, on access to the continuum of health care services, including medical rehabilitation; and

(2) Evaluation of the impact of triage and case management strategies on health status and rehabilitation outcomes.

Research on Trauma Rehabilitation

Research to improve the restoration and successful community living of individuals with burns and neurotrauma such as spinal cord injury, brain injury, and stroke, has long been an important component of NIDRR's program. Specific research priorities include:

(1) Identification of methods to minimize neurological damage, improve behavioral outcomes, and enhance cognitive abilities; and

(2) Identification of effective collaborative research opportunities, using data generated by the model systems.

Research on Progressive and Degenerative Disease Rehabilitation

Research to maintain and restore function and independent lifestyles for individuals with multiple sclerosis, arthritis, and neuromuscular diseases is a key element of medical rehabilitation research. Specific research priorities include:

(1) Identification and evaluation of methods to maintain function for persons with these conditions;

(2) Identification of effective health promotion strategies;

(3) Evaluation of strategies to minimize the impact of secondary conditions; and

(4) Development and evaluation of health care and rehabilitation medicine supports to facilitate community integration and independent living outcomes.

Research on Birth Anomalies and Sequelae of Diseases and Injuries

Medical and technological interventions to maintain and restore function in persons with cerebral palsy, spina bifida, post-polio syndrome, and other long-standing conditions are an important part of rehabilitation. Specific research priorities include:

(1) Development and evaluation of physical therapy techniques, respiratory management techniques, exercise regimens, and other rehabilitative interventions aimed at maximizing functional independence;

(2) Development and evaluation of supports to facilitate community integration and independent living outcomes, and;

(3) Investigation of factors that lead to disability and loss of full participation in society following disease or injury.

Research on Secondary Conditions

Prevention and treatment of secondary conditions are critical to preserving health and containing health care costs of persons with disabilities. Specific research priorities include:

(1) Development of clinical guidelines to identify at-risk individuals and to involve consumers in regimens to prevent secondary conditions;

(2) Identification and evaluation of methods of preventing and treating secondary conditions across impairment categories; and

(3) Investigation of the interaction among secondary conditions, impairments, and aging.

Research on Emergent Disabilities

Explorations of the impact of disabilities resulting from new causes or expanding disability definitions will be of increasing significance to rehabilitation medicine. Emergent conditions may include such things as environmental illnesses, repetitive motion syndromes, autoimmune deficiencies, and psychosocial and behavioral conditions related to poverty and violence. Specific research priorities include:

(1) Identification and evaluation of the need for health and medical rehabilitation services to address emerging disability conditions;

(2) Identification and evaluation of effective models by which health and medical rehabilitation providers can meet the needs of persons with emerging disabilities; and

(3) Development of models to predict future emerging disability populations.

Research on Aging With a Disability

Advances in acute medical care for persons with disabilities means that, as the population ages, many disabled persons will live longer and may develop the serious, chronic conditions common to many aging populations. Examples of these chronic conditions include heart disease, diabetes, cancer, pulmonary diseases, arthritis, and sensory losses. Specific research priorities include:

(1) Determination of the implications of aging with a disability on access to routine health care, medical rehabilitation services, and services that support community integration;

(2) Investigation of the impact of aging on disabilities and the impact of various disabilities on the aging process;

(3) Investigation of the relationship between age-related disability and employment; and

(4) Analysis of the effect of longer lifespan on the durability and effectiveness of previously demonstrated interventions and technologies.

Research on Rehabilitation Outcomes

NIDRR's prior research efforts have developed new rehabilitation techniques for a number of disability groupings and also have developed and tested comprehensive model systems, home and community-based services,

and peer services to improve rehabilitation outcomes. With the renewed emphasis on performance and outcomes and with increasing economic constraints generated by changes in the health services delivery system, rehabilitation medicine needs to document the impact of its services. Specific research priorities include:

(1) Expansion of outcomes evaluation approaches, beyond short-term rehabilitation studies, to include outpatient and long-term follow-up information;

(2) Development of outcomes measures that include measures of environmental barriers;

(3) Evaluation of methods that translate outcomes findings into quality improvement strategies; and

(4) Analysis of barriers and incentives to consistent use of health and medical rehabilitation outcomes measures in payer and consumer choice models.

Research on Changes in the Medical Rehabilitation Industry

The medical rehabilitation industry is undergoing an unprecedented level of consolidation, with unknown consequences for access and flexibility. The industry has undergone significant changes in service sites with the move from inpatient to post-acute, outpatient, and community-based services. Outcomes measurement and quality assurance initiatives are increasingly used in evaluating medical rehabilitation services. Specific research priorities include:

(1) Investigation of the impact of financing and other market forces on the medical rehabilitation industry, including service delivery patterns and treatment modalities; and

(2) Identification and evaluation of the impact of changes at the medical rehabilitation industry level on access and outcomes for persons with disabilities.

A major research challenge will be to integrate research on the efficacy of interventions to improve outcomes with research on the impact of changes in the health care delivery system. A second overarching objective will be to relate medical rehabilitation and health care research to other changes, including the new paradigm of disability, the emerging universe of disability, and participatory research by persons with disabilities.

Chapter 5: Technology for Access and Function

''For Americans without disabilities, technology makes things easier. For Americans with disabilities, technology makes things possible'' (Mary Pat Radabaugh, 1988).

Overview

Technology has been defined as the system by which a society provides its members with developments from science that have practical use in everyday life. Today, technology plays a vital role in the lives of millions of disabled and older Americans. Each day, people with significant disabilities use the products of two generations of research in rehabilitation and biomedical engineering to achieve and maintain maximum physical function, to live in their own homes, to study and learn, to attain gainful employment, and to participate in and contribute to society in meaningful and resourceful ways. It is more than coincidence that these remarkable advances have occurred during the period in which Federal funds have supported research, development, and training in rehabilitation and biomedical engineering.

In planning the future of rehabilitation engineering research, NIDRR and its constituents in the consumer, service, research, and business communities will continue to identify flexible strategies to address emerging issues and technologies, to promote widespread use of research findings, and to maximize the impact of NIDRR programs on the lives of persons with disabilities. NIDRR is particularly well positioned to continue its leadership in rehabilitation engineering research, since NIDRR locates rehabilitation engineering research on a continuum that includes related medical, clinical, and public policy research; vocational rehabilitation and independent living research; research training programs; service delivery infrastructure projects; and extensive consumer participation.

The Institute supports engineering research on technology for individuals and on systems technology. For example, NIDRR has supported hearing aid and wheelchair research on the individual level, and telecommunications, transportation, and built environment research at the systems or public technology level. NIDRR also supports research on ergonomics and other interface problems related to the compatibility of various technologies, such as hearing aids and cellular telephones.

Technological innovations benefit the individual at the individual level and at the systems level. At the individual level, assistive technology enhances function and at the systems, or public technology level, technology provides access that enhances community integration and equal opportunity. Much of the assistive technology for disabled individuals falls into the category of ''orphan'' technology because of limited markets; frequently this technology is developed, produced, and distributed by small businesses. Often, technology on the systems level involves large markets and large businesses. Access to technology can be increased by incorporating principles of universal design into the built environment, information technology and telecommunications, consumer products, and transportation.

Assistive Technology for Individuals

In 1990, more than 13.1 million Americans, about 5 percent of the population, were using assistive technology devices to accommodate physical impairments, and 7.1 million persons, nearly 3 percent of the population, were living in homes specially adapted to accommodate impairments. While the majority of persons who use assistive technology are elderly, children and young adults use a significant proportion of the devices, such as foot braces, artificial arms or hands, adapted typewriters or computers, and leg braces (LaPlante, Hendershot, & Moss, 1992).

Assistive technology includes devices that are technologically complex, involving sophisticated materials and requiring precise operations—often referred to as ''high tech''—and those that are simple, inexpensive, and made from easily available materials—commonly referred to as ''low tech.'' Scientific research in both high tech and low tech areas will serve the consumer need for practical items that are readily available and easily used. Low-tech devices, for example, are widely used by older persons with disabilities to compensate for age-related functional losses. The importance of the development of both types of assistive technologies is found in the words of one engineer who stated, ''it is not high tech or low tech that is the issue; it is the right tech.'' NIDRR research must be able to identify the most appropriate technological approach for a given application, and continue to develop low tech as well as high tech solutions.

Given the current trend toward more restrictive utilization of health care funds in both public and private sectors, rehabilitation engineering research must justify consumer or third party costs in relation to the benefits generated for consumers. These benefits may be in the form of long-term cost savings and consumer satisfaction. Equally important, rehabilitation engineers must

develop products that are, in addition to being safe and durable, marketable and affordable. End-product affordability is important not only in meeting consumer needs but also in creating the market demand that will encourage manufacturers to enter production.

Systems Technology: Universal Design and Accessibility

As disabled persons enter the mainstream of society, the range of engineering research has broadened to encompass medical technology, technology for increased function, technology that interfaces between the individual and mainstream technology, and finally, public and systems technology. Key concepts of universal design are interchangeability, compatibility of components, modularity, simplification, and accommodations of a broad range of human performance capabilities. Universal design principles can be applied to the built environment, information technology and telecommunications, transportation, and consumer products. These technological systems are basic to community integration, education, employment, health, and economic development. The application of universal design principles during the research and development stage would incorporate the widest range of human performance into technological systems. Universal design applications may result in the avoidance of costly retrofitting of systems in use and possible reduction in need for orphan products.

Technology Transfer

The Institute's emphasis on applied research challenges NIDRR and its researchers to find effective ways of ensuring technology transfer—transfer of ideas, designs, prototypes, or products, from the basic to the applied research environment, to the market, and to other research endeavors. Market size, the potential for manufacturability, intellectual property rights, patents, and regulatory approval are considerations in the conceptualization and design phase of research efforts. NIDRR-funded Rehabilitation Engineering Research Centers (RERCs) consider potential industry partners in selecting research projects that will result in marketable products.

Issues of orphan technology are key to the process of technology transfer, with small markets that have limited capital occasioning the need for subsidies, guaranteed financing for purchases, or other incentives for producers. Future technology transfer efforts at NIDRR will explore better linkages to the Small Business Innovative Research (SBIR) program, a government-wide program intended to support small business innovative research that results in commercial products or services that benefit the public. Innovativeness and probability of commercial success are both important factors in SBIR funding decisions.

Building a Research Agenda

Future rehabilitation engineering research agendas must incorporate several cross-cutting issues, including small markets, and outcomes measures. In addition, research must continue to result in improvements in the functional capacities of individuals with sensory, mobility, and manipulation impairments. Telecommunications and computer access offer significant potential to improve participation of persons with disabilities in all facets of life. Continuous innovations in these areas require that the needs of persons with various disabilities be recognized and accommodated. Finally, access to the built-environment remains a critical need for persons with disabilities, and thus requires ongoing research.

The purpose of NIDRR's research in the area of technology is to:

(1) Develop assistive technology that supports persons with disabilities to function and live independently;

(2) Develop biomedical engineering innovations to improve function of persons with disabilities;

(3) Promote the concept and application of universal design;

(4) Ensure access of disabled persons to telecommunications and information technology, including through the application of universal design principles;

(5) Ensure the transfer of technological developments to other research sectors, to production, and to the marketplace;

(6) Identify business incentives for manufacturers and distributors;

(7) Remove barriers and improve access in the built environment;

(8) Identify the best methods of making technology accessible to persons with disabilities;

(9) Develop rehabilitation engineering science, including a theoretical framework to advance empirical research; and

(10) Raise the visibility of engineering and technological research for persons with disabilities as a consideration in national science and technology policy.

Future Research Priorities for Technology

NIDRR's research priorities in engineering and technology will help improve functional outcomes and access to systems technology in the areas of sensory function, mobility, manipulation, information communication, and the built environment, and promote business involvement and collaboration.

Research to Improve or Substitute for Sensory Functioning. Sensory research is directed toward the problems faced by individuals who have significant visual, hearing, or communication impairments. These major conditions have been the focus of a long tradition of engineering research emphasizing both expressive communication and the receipt of information. Research priorities in the area of sensory functioning will focus on enhancing hearing, addressing visual impairments, and accommodating communication disorders. In the area of hearing impairments, specific research priorities include:

(1) Development and evaluation of hearing aids that exploit the potential of digital technology, use advanced signal processing techniques to enhance speech intelligibility, attain a better fit, and insure compatibility with telecommunications systems and information technology;

(2) Evaluation of the application of digital processing techniques to assistive listening systems;

(3) Evaluation of modern methods of sound recognition in alerting devices; and

(4) Development of interfaces for assessment of automatic speech recognition systems.

In the area of vision impairments, specific research priorities include:

(1) Identification and evaluation of methods to enhance accessibility of visual displays;

(2) Development and evaluation of graphical user interface technologies for various document and graphic processing systems; and

(3) Improvement of signage in public facilities.

In the area of communication impairments, specific research priorities include:

(1) Identification and evaluation of technologies to enhance the communication abilities of persons who are deaf-blind; and

(2) Assessment of the capacity of research in cognitive science, artificial intelligence, biomechanics, and human/computer interaction to improve the rate, fluency, and use of communication aids.

Research To Enhance Mobility

Mobility research is directed toward the problems associated with moving

from place to place. Mobility can be enhanced by accessible public transportation; modified privately owned vehicles; wheeled mobility devices such as wheelchairs; orthoses, and prostheses; and barrier removal. In the area of enhancing mobility, specific research priorities include:

(1) Development, evaluation, and commercialization of wheelchair designs that reduce user stress, repetitive motion injury, and other secondary disabilities, while improving safety, ease of maintenance, and affordability;

(2) Revision and dissemination of wheelchair standards;

(3) Development and evaluation of techniques to assist consumers and providers in selecting and fitting wheelchairs and wheelchair seating systems;

(4) Identification of a theoretical framework of gait and other aspects of ambulation;

(5) Development and evaluation of advanced prosthetic and orthotic devices, as well as footwear and other ambulation devices;

(6) Development and evaluation of methods to improve person-device interfaces, post-surgical management and fitting, and materials used in bio-engineering applications; and

(7) Development of devices to assist with ADLs for persons with disabilities and their caregivers.

Research to Improve Manipulation Ability

The manipulation area includes research directed toward restoring functional independence for persons with limited or no use of their hands. This encompasses upper extremity prosthetic and orthotic devices, and novel methods of upper extremity rehabilitation. Issues of weight, durability, and reliability remain challenges in this field.

Repetitive motion injury is emerging as one of the most serious problems among workers. While there have been a number of ergonomic devices introduced to address this problem, the incidence of this condition continues to increase. In the area of improvement of manipulation, specific research priorities include:

(1) Identification of methods to improve the design of and achieve multi-functional control for hand/arm prosthetic technology;

(2) Development and evaluation of surgical approaches that increase functionality; and

(3) Development and evaluation of devices and techniques to minimize the onset of repetitive motion injuries and to rehabilitate those with the condition.

Research to Improve Accessibility of Telecommunications and Information Technology

Computerized information kiosks, public web sites, electronic building directories, transportation fare machines, ATMs, and electronic stores are just some current examples of rapidly proliferating systems that face people living in the modern world. Research priorities will include development and evaluation of techniques to make such computerized information systems accessible to persons with a range of disabilities.

The information technology and telecommunications industry trend away from standardized operating systems and monolithic applications and toward net-based systems, applets, and object-oriented structures has significant implications for accessibility for some persons with disabilities. Maintaining accessibility to the Internet and World Wide Web is also a formidable challenge facing individuals with disability.

Another concern in telecommunications is electromagnetic interference from the rapidly proliferating wireless communication systems (e.g., beepers, cellular telephones) and other electronic devices using digital circuitry (e.g., computers, fluorescent light controllers). This interference is complicating the use of assistive listening devices. Moreover, interference caused by over-use of spectrum is presenting problems in the use of FM Assistive Listening systems.

During the past decade, virtual reality techniques, originally developed by NASA and the military for simulation activities, have been applied in a number of other fields, including architecture and health. Applications can be found in telerobotic systems, sign language recognition devices, intelligent home systems, and aids for persons with visual impairments. There has been some beginning research on the use of virtual reality as an evaluation and therapy tool.

Telecommunications also emerges in other important areas of the lives of persons with disabilities. In a managed care approach to health care, individuals are discharged from acute rehabilitation hospitals earlier than in the past. Because of the decreased length of stay, there is less time for consumers to learn how to manage their conditions. One promising option for ameliorating these effects is telemedicine or ''telerehabilitation.'' Telerehabilitation may allow for distance monitoring of chronic conditions and for monitoring consumer compliance and progress.

In the area of telecommunications and information technology, specific research priorities include:

(1) Development and evaluation of fine motor skill manipulation interfaces, telecommunication interfaces, and analog to digital communication technologies;

(2) Identification of methods to address issues of accessibility through Internet communications;

(3) Development and evaluation of methods for reducing emerging forms of interference that affect hearing aids, telephones, and other communication devices;

(4) Determination of the efficacy of virtual reality techniques in both rehabilitation medicine and in applications that affect the daily lives of persons with disabilities; and

(5) Identification of appropriate telecommunications strategies for use in distance follow-up to rehabilitation treatment.

Research To Improve Access to the Built Environment

The built environment includes public and private buildings, tools and objects of daily use, and roads and vehicles, any of which can be accessible or disabling. Architects, industrial designers, planners, builders, and engineers are among the professionals that create this environment. In the area of access to the built environment, specific research priorities include:

(1) Analysis of human factors;

(2) Development and evaluation of modular design;

(3) Determination of best methods of disseminating information on universal design;

(4) Development and evaluation of compatible interfaces; and

(5) Development and promulgation of design standards.

Future engineering research also must recognize the changing roles of consumers, whose participation in research is vital, and the role of assistive technology industries, whose technical capabilities and needs for product development and research are changing. Small businesses, the engine of the orphan technology industry, often cannot support sophisticated research and development efforts necessary to bring quality products to market. NIDRR's research can identify public policy issues, such as orphan technology and tax credits, to foster small business investment in assistive technology innovation. Similarly, NIDRR research can identify public

policy and business issues related to mainstream systems and public technology. NIDRR will maintain a research capacity that provides a continuing stream of new ideas, and evidence to validate those ideas, to stimulate the industry.

Chapter 6: Independent Living and Community Integration

''Whether we have disabilities or not, we will never fully achieve our goals until we establish a culture that focuses the full force of science and democracy on the systematic empowerment of every person to live to their full potential'' (Justin Dart, February 1998 (edited) ON A ROLL RADIO, http://www.onarollradio.com).

Overview

Independent living and community integration concepts and outcomes are key foci of NIDRR research. Central to independent living is the recognition that each individual has a right to independence that comes from exercising maximal control over his or her life, based on an ability and opportunity to make choices in performing everyday activities. These activities include managing one's own life; participating in community life; fulfilling social roles, such as marriage, parenthood, employment, and citizenship; sustaining self-determination; and minimizing physical or psychological dependence on others. While independent living emphasizes maximal independence, whatever the setting, it is, by its very nature, a concept that also emphasizes participation, especially participation in community settings. For this reason, NIDRR is proposing to integrate its research agenda in independent living and community integration to encourage interdisciplinary thinking about the interrelationship, to achieve more successful outcomes for persons with disabilities, and to foster the development of innovative methods to achieve these outcomes and to measure the achievements.

Independent Living and Community Integration Concepts

One framework for formulating this research agenda recognizes that independent living has been used to describe a philosophy, a movement, and a service program. At a philosophical level, independent living addresses the question of equity in the right to participate in society and share in the opportunities, risks, and rewards available to all citizens. It provides a belief system to a generation of people with disabilities. The new paradigm of disability is an outgrowth of this philosophical concept of equity, bringing social and environmental elements to the meaning of disability.

At a movement level, independent living has been integral to the development of the disability rights movement. This movement primarily has used a civil rights approach to demand equal access for persons with disabilities, leading most notably to the passage of the Americans with Disabilities Act (ADA) in 1990. These movement activities have had a significant impact on disability policy and will continue to be examined as part of NIDRR's Disability Studies funding.

At the service system level, more than 300 centers for independent living receive funding under the Rehabilitation Act and these centers foster and enhance independent living for persons with disabilities. In addition, both Federal and State funds support community-based residences for members of the developmentally disabled community as well as members of other disability groups. In the past NIDRR has supported research to develop management strategies for these centers.

Community integration also has conceptual, movement, and service delivery components. As a concept, it incorporates ideas of both place and participation, in that community integration means not only that a person is physically located in a community as opposed to an institutional setting, but that the individual participates in community activities. Issues of consumer direction and control also are integral to concepts of community integration.

As a movement, community integration had a primary goal of deinstitutionalization of persons with mental retardation or mental illness and has succeeded in moving many individuals from large institutional settings back into the community. The deinstitutionalization movement arose from a confluence of consumer advocacy, judicial decisions, research efforts, and public policy reforms. During the last 30 years, deinstitutionalization decreased the number of individuals with mental retardation and mental illness residing in state institutions by more than 75 percent. In addition, advocacy organizations for people with physical disabilities have implemented the movement aspects of community integration in their demand for community-based supports and services.

At the service system level, community integration has resulted in development or expansion of a range of services and programs designed to support individuals with disabilities to live in their communities. For instance, individuals who need assistance with ADLs, such as bathing, dressing, or ambulation, often need personal assistance services (PAS) to live independently in the community. In the traditional service delivery model, long-term care agencies supply PAS by providing home health care aides to individuals. These aides tend to work under the direction of professional health care providers and perform a restricted set of tasks in time frames determined by the agency. A support model, however, shifts the locus of control to the consumer, who is responsible for recruiting, hiring, training, supervising, and firing assistants.

Expanding the Theoretical Framework

NIDRR proposes the continued development of a knowledge base about the meaning and application of independent living and community integration concepts. This theoretical approach will address issues of inclusion, bases for participation, and ways in which persons identify their communities. This effort will be interdisciplinary in nature and will draw from disciplines such as anthropology, sociology, social psychology, history, Disability Studies, engineering, and medicine. Each of these disciplines have offered various interpretations of the issues at the core of the concept of community. Anthropologists have defined community to emphasize a shared culture or a way of organizing and giving meaning to life events. Sociologists have discussed community as an organized group dealing with common issues in relation to other organized groups within an environment. Historians have defined community as a web of relationships creating a social order within a political and spatial context that often focuses on issues of who is legitimately a community member. In the world of disability and rehabilitation, community also has had multiple meanings. In medical rehabilitation, return to community usually refers to life outside a medical facility, typically the community in which an individual resided before an injury or illness. In the disability world, community sometimes means the community of those living with a disability, those who share experiences or identity.

To go from theory to practice involves identifying the necessary factors for achieving independence within a community setting. In recent years, there has been a shift from a traditional service delivery model to a model that emphasizes consumer direction and support. As a consequence, individuals with disabilities of all types have shifted from a dependence on agency service providers to an active use of community-based supports. In the support model, consumer choice, customization of needed services, and consumer empowerment are of increased importance compared to the traditional model in which service agencies emphasized professional competence, accountability, and quality control by service providers, and the safety of clients. Also, in the support model, persons with disabilities are perceived as self-directed, able, and mainstreamed as opposed to being helpless and objects of care in the traditional model. Implications for research focus on investigation of major physical and societal environmental factors, including physical accessibility; societal attitudes and policies; and availability of services, supports, and assistive technology that facilitate full participation.

The emphasis on social and policy barriers inherent in the new disability paradigm provides an incentive to examine the extent to which the ADA has contributed to independent living and community integration. The ADA applies a civil rights model in addressing societal policies and practices that create barriers to full participation in society. If, however, the ADA is to have a truly transformative impact on American society, there must be a vision of a non-discriminatory society against which progress can be measured. At present, there are no real benchmarks by which to assess the ADA's impact. Evaluations tend to be in terms of ''cases'' handled, complaints resolved, lawsuits won, physical barriers removed, or volumes of information assembled rather than the extent to which the ADA has resulted in greater participation in society by persons with disabilities.

The growing realization of the importance of environmental barriers in disability focuses concern on environmental changes that have the potential to impede or facilitate independent living and community integration. Perhaps most striking are the continuous developments in telecommunications and information technology. Accessible computers and Internet infrastructure as well as universal or specialized communication devices afford access to information and interactions among persons with disabilities, their families, advocates, service providers, employers, and others. Careful planning, based on research, will be a requirement for ensuring that new technologies increase participation rather than isolation for persons with disabilities.

Directions of Future Research on Independent Living and Community Integration

The purpose of NIDRR's research in the area of independent living and community integration is to facilitate participation of persons with disabilities in society by:

(1) Identifying and evaluating factors or domains of community integration and independent living, especially those aspects that lead to full participation in society;

(2) Identifying and evaluating community support models that promote community integration and independent living outcomes for individuals with all types of disabilities and from a full range of cultural backgrounds;

(3) Providing empirical evidence of the impact of consumer control on outcomes associated with community integration and independent living;

(4) Assessing the impact of environmental factors on individual achievement of community integration and independent living;

(5) Developing and disseminating training on independent living and community integration concepts and methods for consumers, families, service providers, and advocates; and

(6) Developing and evaluating management tools to enable centers for independent living and other community programs to support independent living and community integration.

Future Research Priorities in Independent Living and Community Integration

Research will analyze the implications of shifting from services to supports for the individual and must develop an in-depth understanding of the role of supports in facilitating community integration and independent living.

Research on Community Integration/ Independent Living Concepts

Both personal experience and certain academic disciplines provide guidance for understanding community integration and independent living. Development of an integrated conceptual framework will facilitate rigorous research on how to use community integration and independent living concepts to improve the lives of persons with disabilities. Additionally, research must find ways to measure these outcomes in order to evaluate services provided to persons with disabilities. Specific research priorities include:

(1) Review of relevant scholarship and creation of a theoretical framework for the study of community integration and independent living that incorporates the real world experiences of persons with disabilities, and includes knowledge gained from Disability Studies;

(2) Development of measures that build upon the conceptual framework, and that can be applied to evaluation of rehabilitation interventions intended to increase independence and integration; and

(3) Analysis of cultural perspectives as facilitators-obstacles to independent living and community integration.

Research on Implementation of Community Integration/Independent Living Concepts

The independent living and community integration movements have contributed conceptual standards for evaluating disability and medical rehabilitation services and programs. Further research is needed on how to apply these concepts in different real-world settings. Currently, many programs and services do not reflect these concepts and, consequently, often provide services that do not incorporate consumer direction or allow consumer choice. Specific research priorities include:

(1) Identification and assessment of models of service delivery that incorporate concepts of independent living and community integration and reflect understanding of the importance of environmental barriers; and

(2) Development and dissemination of training materials on independent living and community integration concepts for consumers, families, service providers, and advocates.

Research on Measures of Independence and Community Integration

To evaluate how programs and services contribute to the outcomes of independence and community integration, researchers, policymakers, and consumers must have adequate measures of these outcomes. As discussed elsewhere in this plan, NIDRR is placing special emphasis on development of measures of the interrelationship between the individual and the environment. Concepts of independent living and community

integration are integral to that process. Specific research priorities include:

(1) Development of measures of independence and community integration that are consumer sensitive and that measure the impact of the environment and accommodation on these outcomes; and

(2) Evaluation of strategies to promote independence, inclusion, and participation.

Research on Physical Inclusion

Housing, transportation, communication, and architectural barriers limit the physical inclusion of persons with disabilities. Lack of funding also affects access to these necessary community supports and funding constantly changes because of policy decisions at the Federal and State levels. Specific research priorities include:

(1) Identification and evaluation of models that facilitate physical inclusion, including the development and evaluation of supported housing and transportation models that are consistent with consumer choice; and

(2) Investigation of the impact of managed care on access to services and equipment that provide support for physical inclusion.

Research on the Impact of the ADA

The impact that the ADA has had or will have on participation in society currently is unknown. It is important to identify the obstacles to optimal achievement of the goals of the ADA. Specific research priorities include:

(1) Evaluation of the impact of the ADA on community participation of persons with disabilities and on the achievement of independent living and community integration outcomes;

(2) Examination of questions of accessible infrastructure, employment patterns, civic participation, recreational activities, societal attitudes, and policies to determine what post-ADA policy initiatives may be required to attain full participation by persons with disabilities; and

(3) Analysis of the extent to which the ADA has affected other public policy initiatives.

Research on the Impact of Technological Innovation

While the potential benefits of technological innovations are often assumed, there also are potential issues about accessibility, equity, and application of communications technology and how these issues affect independent living and community integration. Specific research priorities include:

(1) Assessment of the impact of applications of telecommunications innovations on independent living and community integration outcomes;

(2) Identification of barriers to participation in the community, including those resulting from inequitable distribution of technology or reduction of interpersonal contact; and

(3) Exploration of potential innovative applications of telecommunications and information technologies to expand opportunities for informed choice, independence, communication, and participation.

Research On Increasing Personal Development and Adaptation

NIDRR previously has funded personal skills development training to assist people with disabilities to live in the community. This training includes skills related to behavior management, communication, and productive work. In the area of behavior management for people with mental retardation and mental illness, strategies have focused on minimizing ''challenging behaviors.'' Specific research priorities include:

(1) Identification of strategies that promote development of self advocacy skills, including social and communication tools to assist people with disabilities to live in community settings;

(2) Analysis of the influences of environmental factors in developing positive behavioral support models;

(3) Development of cost-effective techniques to foster the capacity of providers, educators, and families to prevent or respond to challenging behavior; and

(4) Assessment of the potential role of technology in promoting personal development and adaptation in community settings.

Research on Personal Assistance Services

It is important to test hypotheses about the role of personal assistance services (PAS) in promoting community integration, return to work, health maintenance, and conversely, in saving health care and institutionalization dollars. The relative value of different PAS systems for disabled individuals of varying ages, disability types, ethnic groups, and personal independence goals is unknown. Although research has demonstrated the impact of consumer-directed PAS models on consumer satisfaction, the relationship of satisfaction to quality of life and other outcomes measures needs further explication. Specific research priorities include:

(1) Evaluation of the quality-of-life and cost-effectiveness outcomes of consumer-directed services;

(2) Analysis of the impact of PAS on participation in employment; and

(3) Evaluation of the impact of assistive technology on need for and use of personal assistance services.

Research on Social Roles

Public policy research is needed to examine how rules and regulations of public programs affect achievement of desired roles by people with disabilities. Marriage, parenthood, and employment are among the social roles that are often discouraged by legislation, regulations, policies, and practices. Specific research priorities include:

(1) Investigation and documentation of the ways in which Federal, State, and local legislation, regulations, policies, and practices impact on social role performance of persons with disabilities; and

(2) Identification and evaluation of tools to assist persons with disabilities in fulfilling their social roles.

Research on Social Integration and Self-Determination

The abilities to form mutually rewarding and non-exploitative friendships, to recognize and express personal preferences, to evaluate options and make decisions, to advocate for oneself, and to adapt to changes in circumstances are attributes that contribute significantly to independent living and community integration. Specific research priorities include:

(1) Identification and evaluation of service delivery models that incorporate individual choice and consumer control into strategies for achieving social integration and self-determination;

(2) Development of measures to evaluate independent living and community integration in terms of inclusion, social integration, and self-determination; and

(3) Assessment of the prevalence of abuse and violence in community settings and development of strategies to minimize their occurrence.

Research on Management Tools for Centers for Independent Living

NIDRR has previously funded research on effective management strategies for centers for independent living. Continued research in this area will evaluate the effectiveness of current systems and address the challenges to these centers in their expanding roles. Specific research priorities include:

(1) Development of strategies for centers for independent living to succeed in their roles with State

rehabilitation agencies, and other agencies and groups concerned with independent living;

(2) Development and evaluation of strategies for centers for independent living to design and adapt programs that address the changing nature of the disability population; and

(3) Development and evaluation of strategies for centers for independent living to respond to increased emphasis on ADA issues, such as accommodation, accessibility, and universal design; and

(4) Investigation of applications of new information technologies in management of centers for independent living.

Research to facilitate community integration and independent living will focus on strategies to make communities, social systems, public policies, and the built environment more accessible to persons with disabilities and more supportive of their independence and participation. In the new paradigm scenario, the emphasis will be on supports rather than services, the managers of support systems will increasingly be persons with disabilities themselves, and services originally designed for application in institutions will be adapted for use in the general community.

Chapter 7: Associated Disability Research Areas

''I make no claim, as other people with a disability might, that the essence of what I experience is inherently uncommunicable to the able-bodied world. I do not believe that there is anything in the nature of having a disease or disability that makes it unsharable or even untellable'' (Irving Zola, 1935–1994).

Several important issue areas cut across the four research areas—Employment, Health and Function, Technology for Access and Function, and Independent Living and Community Integration—described in the earlier part of this section. Disability statistics, disability outcomes measures, Disability Studies, rehabilitation science, and disability policy research are all integral to successful completion of a comprehensive agenda in disability and rehabilitation research. NIDRR will fund research efforts in each of these areas during the next five years to enhance NIDRR's overall research program and contribute to NIDRR's achieving its goals of helping people with disabilities attain maximal independence. Priorities for each research area are discussed below.

Disability Statistics

NIDRR has several purposes in advancing work in disability statistics. First, it is important to maximize the usefulness of data currently collected in reliable national data sets. Second, it is important to encourage the creation and analysis of research databases, including meta-analyses focused on problems such as employment rates or utilization of health care or social services. Third, NIDRR seeks to understand the composition of a possible emerging universe of disability created by new disabilities or socioeconomic variations in the distribution of existing disabilities. These changing areas have implications for both public health and rehabilitation. Fourth, NIDRR wants to assist in providing input to the formulation of national disability statistics policy, including the incorporation of measures relevant to the new paradigm of disability. Finally, NIDRR recognizes the need for surveys to be conducted in accessible formats, and for disability demographic and statistical data to be readily available to a wide range of audiences.

Data about the incidence, prevalence, and distribution of disability and the characteristics and experiences of disabled persons, are critical to planning research and services, evaluating programs, and formulating public policy. These data may be generated by diverse sources such as national population surveys, program data collection on participants, and researcher-compiled data sets relevant to specific research areas. Other, less prominent sources include State and local surveys, advocacy organization data, and market research data.

Existing data resources are of varying degrees of completeness and quality, and are not sufficiently comprehensive in scope or perspective. None takes into account the new paradigm of disability which examines the interaction between the individual and the environment, and requires measures of environmental as well as individual factors that contribute to disability. NIDRR has taken a lead role in elucidating the connection between impairment and the supports or limitations imposed by the built and social environments, and will initiate the process of developing new survey measures to define disability accurately and reliably in the context of both individual and environmental factors.

Research Priorities for Disability Statistics

NIDRR will continue to support the secondary analysis of major national data sets, especially the Disability Supplement to the National Health Interview Survey, identifying information and connections not considered by the survey sponsors. NIDRR's other focus will be the refinement of the disability data effort to reflect new paradigm concepts. Specific research priorities include:

(1) The elucidation of salient issues or the stimulation of further research questions through meta-analyses;

(2) Development and evaluation of state-of-the art measurement tools that will assess the complex interactions between impairment and environment;

(3) Development and evaluation of strategies to ensure that disability statistics accurately capture information on underrepresented minorities and emergent disabilities;

(4) Development and evaluation of methods for ensuring the dissemination of disability statistical data to diverse audiences; and

(5) Development and testing of accessible survey instruments and protocols.

Disability Outcomes Measures

The importance of demonstrating outcomes across service settings, programs, and research efforts cannot be overemphasized, given resource allocation issues and concerns about value that operate at every level of our society. Demonstrating outcomes is an integral part of NIDRR's research agenda now and in the future. For purposes of discussion, several categories of outcome measures are presented. In practice, however, these measures may not be mutually exclusive.

One area in which significant prior work on outcomes measures has occurred is medical rehabilitation. A number of measures have been developed and integrated into service delivery and research settings. Examples of these measures include impairment specific measures such as the NIH Stroke Scale, disability measures like the Functional Independence Measure (FIM), and measures of handicap such as the Craig Hospital Assessment and Reporting Technique (CHART). Many of these measures, however, have been validated narrowly and are not applicable across disability groups. Some were developed for hospital settings and require revision for use in post-acute programs or in community settings. The new focus on long-term outcomes requires measures that can document changes over time. Use of an outcomes-based approach also has ramifications for sample design, in terms of identifying homogeneous groups of consumers for comparison

and using effective risk-adjustment methodologies. New managed care approaches have resulted in demands by people with disabilities for outcomes monitoring to ensure that quality care standards are met. This concern for measurable outcomes, based on quality standards, also is evident in the payer community, which has raised questions about evidence of the efficacy of treatments.

Expanding the focus of outcomes research to incorporate measures of environment and accommodation is critical to continued implementation of a new paradigm of disability. At the present time, our ability to describe the interaction of individual and environment is limited by a lack of validated measures. A number of conceptual and methodological concerns must be addressed in developing such measures. Of particular relevance is how best to account for the impact of numerous variables, including environmental factors, that impinge on long-term outcomes.

Independence and community integration have been identified as overarching NIDRR goals, and NIDRR's research initiatives relate directly to supporting achievement of these goals. As indicated earlier, some measures of community integration are already in use, including CHART and the Community Integration Questionnaire (CIQ). These measures, developed for specific populations, are examples of tools that might be refined to monitor and compare progress toward goals of independence and community integration.

Distinctly related to functionally oriented medical outcomes measures are measures of quality of life. These measures are conceptually linked to individual values about living with disability and include the impact of rehabilitation and environmental barriers. A particular challenge in developing these measures is the qualitative nature of individual valuation of life quality and the difficulty of constructing ways of comparing individual perceptions.

Research Priorities for Disability Outcomes Measures

NIDRR will support research and development activities that increase the availability of measures across the areas discussed in this section. Specific research priorities include:

(1) Refinement of existing measures of medical rehabilitation effectiveness to improve assessment of functional ability by incorporating environmental factors;

(2) Development and evaluation of measures of independence, community integration, and quality of life, especially measures that incorporate the perspectives of persons with disability; and

(3) Development of measures for use in outpatient and community-based settings.

Disability Studies

The field of disability and rehabilitation research has not reached a general consensus on the meaning of the term ''Disability Studies.'' NIDRR uses the term generally to refer to the holistic study of the phenomenon of disability through a multidisciplinary approach that emphasizes the perspectives of persons with disabilities and regards personal experience as valuable data. The IOM, in Enabling America, describes Disability Studies as ''the examination of people with disabling conditions and cultural response to them through a variety of lenses, including * * * economics, political science, religion, law, history, architecture, urban planning, literature * * *'' (1997, p. 289). NIDRR believes that Disability Studies is a natural complement to the new paradigm, emphasizing study of the complex relationship between various aspects of disability and society, and will enhance the methodologies and knowledge base of each involved scientific discipline.

In this respect, the content of Disability Studies is not unlike that of other area studies, such as Women's Studies, African-American Studies, or geographic, regional or ethnic studies (e.g., Middle Eastern Studies or Islamic Studies). All of these areas of study require the convergence of theory, technique, and methodology from a range of disciplines to develop an enhanced understanding of a complex phenomenon.

Another purpose for the development of any area of studies is to assure that the perspective of the group under study is reflected in the methodology and body of core knowledge, and that individuals from the group have the opportunity to participate in the development and promulgation of the methodologies and the curricula. This also can be expected to lead to an impact on core disciplines, specifically an impact that requires development of theories and hypotheses that do not ignore the subject population. For example, Women's Studies have influenced the development and legitimation of studies of the sociology of gender within a discipline that 30 years ago relegated the study of women, when they were studied at all, to home economics or family relations. Economists analyzing poverty now must consider the particular causes and effects of poverty among women and in ethnic groups, largely due to the attention and legitimation of these subjects by the ''area studies'' efforts.

NIDRR has three basic purposes for supporting a program of Disability Studies. First, disability and rehabilitation research needs a body of knowledge that is comprehensive and holistic, reflecting a range of disability perspectives, and it needs a larger cadre of researchers and policymakers familiar with that knowledge base. Second, the field of disability and rehabilitation research needs to develop methodologies and influence the theories and practices of a range of disciplines in order to ensure their constructive attention to the issues related to disability, thereby enhancing the scientific endeavor. Third, consistent with the goals of the Rehabilitation Act, as amended in 1992, especially its principles of inclusion, integration, and independence, NIDRR believes it is important to reflect the perspectives of individuals with disabilities in studies of disability and to afford increased opportunity for individuals with disabilities to participate in the development of curricula and methodologies to study the phenomenon of disability.

Research Priorities for Disability Studies

Specific research priorities for Disability Studies include:

(1) Development of a theoretical framework for conducting Disability Studies and strategies for teaching Disability Studies at various academic and non-academic levels;

(2) Compilation of information about the many forms of extant Disability Studies, including academic levels, disciplines involved, course content, resources, and students; and

(3) Exploration of the feasibility of developing non-academic courses in Disability Studies that will facilitate the study of the experience, history, and culture of disability in community-based settings.

Rehabilitation Science

Permeating NIDRR's research agenda will be an awareness of opportunities to construct and test a theoretical framework for rehabilitation science. As defined in the 1997 IOM report, Enabling America, rehabilitation science is a study of function, focusing on the processes by which disability develops, and the factors influencing these processes. Its goals are to contribute to better treatment and technology for persons with disabilities. Rehabilitation science focuses on factors that lead to

transitions along a continuum from underlying pathology to functional independence, including impairment, functional limitation, and disability. In addition, it analyzes physical, behavioral, environmental, and societal factors that affect movement along the continuum (Brandt & Pope, 1997). The field of rehabilitation has produced a body of empirical evidence regarding function and interventions to improve function. The next challenge is to use this evidence to produce a body of scientific and engineering theory that can be applied to the development of breakthroughs in functional restoration techniques.

Research Priorities for Rehabilitation Science

Specific research priorities for rehabilitation science include:

(1) Further elucidation of the enabling-disabling process; and

(2) Exploration of the development and application of a theoretical framework for rehabilitation science.

Disability Policy

Public disability policy broadly defines the participation of disabled persons in the general benefits society provides to all citizens, as well as the parameters of disability-specific benefits. Public policy has more significance for people with disabilities and their families than for many segments of the population. This differential impact stems, in part, from the fact that people with disabilities must interface with so many different components of public policy systems, many of which are conflicting or inconsistent, such as employment goals and requirements for income assistance programs. The larger public policy context for disability and rehabilitation research reflects interlinking service delivery systems in which changes in one system often have substantial impact on others. The dilemma for disability and rehabilitation policy is that the various systems are not mutually reinforcing.

The lack of mutual reinforcement stems from four factors. First, policy goals may be, to some degree, mutually exclusive; that is, policies designed to emphasize one goal may be implemented only at the expense of other goals. Second, different policies are governed by different and conflicting assumptions about disability and the role of people with disabilities in American society. Third, some service systems lack integration with other systems and programs needed to promote continuity between different parts of people's lives. Fourth, disability has been largely ignored in national science and technology policy. Thus, underlying conflicts may exist and result in unintended disincentives to work and independence.

At the systems and societal levels, the potential impact of policy initiatives on persons with disabilities may be even more significant, although more likely to go unrecognized. The impact of telecommunications, the built environment, health care, and labor market policies have been discussed in this Plan.

Research Priorities for Disability Policy

Disability policy research should examine issues that are national in scope and that represent intersections of public interest. Such research should use national data sets, where possible, to determine the impacts of policy decisions on persons with disabilities. Specific research priorities include but are not limited to:

(1) Analysis of how the bundling of income supports with other benefits, including health insurance and other in-kind assistance such as housing subsidies or food stamps, affects individual decisions to seek or continue employment;

(2) Evaluation of the impact of changing social policies toward parenting, personal assistance services, tax deductions, or education, among other factors;

(3) Analysis of the impact of welfare-to-work initiatives on the well-being of persons with disabilities or their families;

(4) Evaluation of the impact of macroeconomic issues, such as changing labor force requirements, on employment opportunities of persons with disabilities;

(5) Evaluation of the impact of legislation and policy on employers, professional service providers, social service agencies, and direct support workers in terms of their participation in employing, serving, or working for disabled persons;

(6) Investigation and evaluation of the relevance of frameworks for disability research, including but not limited to research on the role of market forces (balancing supply and demand) on disability policy;

(7) Investigation of the impact of national telecommunications and information technology policy on the access of persons with disabilities to related education, work, and other opportunities; and

(8) Examination of the impact of national housing policy and building codes on the living environments and housing choices of persons with disabilities and their families.

Related disability research emphasizes knowledge areas that are cross-cutting and essential to the support and refinement of disability research generally. The common theme linking disability statistics, outcomes measures, Disability Studies, rehabilitation science, and disability policy is that they all provide essential frameworks and building blocks that enable the disability research enterprise to thrive and to address important issues in meaningful ways.

Chapter 8: Knowledge Dissemination & Utilization

''Our mission at the Office of Special Education and Rehabilitative Services is to ensure that people with disabilities become fully integrated and participating members of society. Dissemination and utilization are the tools through which we do this'' (Judith E. Heumann, OSERS Assistant Secretary).

Overview

Effective dissemination and use of disability and rehabilitation research are critical to NIDRR's mission. Research findings can only improve the quality of life of people with disabilities and further their full inclusion into society if they are available to, known by, and accessible to all potential users. NIDRR supports a strong dissemination and utilization program that reaches its many constituencies: research scientists, people with disabilities, their families, service providers, policymakers, educators, human resource developers, advocates, entities covered by the ADA, and others. In carrying out this mission, NIDRR's challenge is to reach diverse and changing populations; to present research results in many different and accessible formats; and to use technology appropriately.

The Rehabilitation Act's 1992 amendments included language requiring NIDRR to ensure the widespread distribution, in usable formats, of practical scientific and technological information generated by research, demonstration projects, training, and related activities. In addition, NIDRR's responsibilities were amended to emphasize wide dissemination of educational materials and research results to individuals with disabilities, especially those who are members of minority groups or of unserved or underserved groups. In addition, the statute requires Rehabilitation Research and Training Centers (RRTCs) to serve as information and technical assistance resources to

providers, individuals with disabilities, and others through workshops, conferences, and public education programs. Rehabilitation Engineering Research Centers (RERCs) are required to disseminate innovative ways of applying advanced technology and to cooperate with Tech Act projects to provide information to individuals with disabilities to increase their awareness of options and benefits from assistive technology.

Effective dissemination employs multiple channels and techniques of communication to reach intended users. This chapter addresses strategies and techniques to disseminate information to a wide range of target audiences and to promote the utilization of this information. These strategies take into account a range of uses—conceptual or practical, total or partial, converted or reinvented. The strategies also incorporate innovative technologies to enhance direct access by diverse groups. Additionally, this chapter outlines NIDRR's proposed research agenda for dissemination and utilization activities.

The Knowledge Cycle—The Role of Dissemination and Utilization

The components of the knowledge cycle are knowledge creation, knowledge dissemination, and knowledge utilization. The concept of the cycle implies continuous interaction among its parts. At NIDRR, knowledge creation results from funded research and training programs, and staff activities. The challenge of NIDRR's dissemination and utilization activities involves transferring this knowledge, targeted to specific user populations, to improve the lives of persons with disabilities.

Effective dissemination requires understanding that communication channels are continually expanding and range from personal communications to mass media (e.g., print, radio, television, the emerging information superhighway, and the merging of these and other communications technologies). To choose the most effective communication strategy, it is helpful to identify clearly the intended audience (e.g., scientists, service providers, persons with disabilities), the context for use (e.g., home, work, community), and the characteristics of the information to be disseminated (e.g., type, use, relative advantage, compatibility, complexity).

Knowledge utilization activities focus on ways to facilitate use of research results, new technologies, and effective practices or programs. To be used, knowledge must relate to a perceived need, must be understandable, and must be timely. Thus, awareness of potential uses for the information should influence research design and materials development, keeping in mind that flexibility is important because there may be unanticipated audiences for the material. Selecting dissemination strategies that relay information quickly is equally important.

The Changing Environment for Dissemination

The environment in which dissemination and utilization strategies operate is being affected by a number of changes, including technological innovation, changing etiology of disability, and an increased emphasis on the individual's interaction with the physical and social universe. These changes must be factored into future dissemination and utilization approaches.

As Paisley notes, ''Many of the problems that challenge knowledge utilization have changed little since the 1960s and 1970s; however, the communications environment of knowledge utilization has changed dramatically (as cited in Southwest Educational Development Laboratory, 1996).'' Consumer demand for direct and rapid access to information, and the technological capacity to disseminate information simultaneously and inexpensively to mass audiences through electronic media, such as the World Wide Web, are changing dissemination and utilization strategies. The Internet, a beginning step in the creation of the global information superhighway, is open to anyone with a computer, modem, and telephone. The number, sophistication, and accessibility of Internet sites serving the information needs of people with disabilities are increasing rapidly. These innovations permit NIDRR projects and centers to communicate more easily with larger numbers of targeted users at all phases of the research process; however, this proliferation raises difficult questions about equity, access, and effectiveness (Southwest Educational Development Laboratory, 1996, p. 8).

Changes in the prevalence and distribution of disabilities are influencing NIDRR's research. An emerging universe of disability, incorporating disability related to underlying social and environmental conditions such as poverty, isolation, and aging, has created new disabilities and new targets for dissemination of research findings.

Finally, the importance of an ecological science model that focuses on relationships and interactions that influence, and are influenced by, the environment of an individual, organization, or community is receiving increased recognition. Research affects society; society, in turn, affects what is studied and how it is studied. NIDRR supports research that is issue-based and flexible to facilitate timely responses to environmental changes and timely contributions to society.

Dissemination/Utilization Strategies for the Future

In response to the needs of constituencies and to the changing physical and social environment, future dissemination and utilization strategies must build upon successful past strategies, while capitalizing on the potential of electronic media and other telecommunications innovations. These strategies must provide accessible formats for new population groups and for individuals with cognitive or sensory disabilities. To be successful, NIDRR grantees need assistance with early integration of dissemination and utilization features into research projects. Efforts will continue to increase the capacity of consumers to access and use research-based information. Finally, NIDRR will support research that will determine effective dissemination methods and evaluation techniques.

In the section that follows, a number of dissemination and utilization activities are proposed. These proposed activities reflect NIDRR's concerns about the importance of dissemination in making research usable to its constituencies.

Dissemination of Research Findings

NIDRR, in order to enhance dissemination of research, will undertake a number of activities, including a national information center, creating databases, developing consumer partners, providing specialized assistance to grantees, using electronic media, targeting new audiences, and evaluating dissemination methods.

Establishing a National Information Center

NIDRR will establish a national dissemination center to address long-term dissemination and utilization objectives for individuals, groups, and communities representing diverse geographic, multicultural, and socio-economic populations. This center will provide technical assistance to grantees in improving their dissemination activities; conduct selected national dissemination projects; and serve as a resource on dissemination theory, new

techniques, and evaluations of dissemination strategies. The center will maintain a web site and will work with groups of NIDRR grantees—for example, the Model Projects for Spinal Cord Injury—to develop accessible, special-focus web sites. In addition, the center will:

(1) Publish research findings in refereed journals for the academic community;

(2) Translate complex research findings into accessible language and format, in consumer-oriented publications;

(3) Maintain a library and information center, such as the National Rehabilitation Information Center (NARIC), with archival and bibliographic retrieval capacity; and

(4) Determine markets for NIDRR-funded research products and appropriate strategies for reaching these markets.

Using Databases and Key Publications. To support knowledge dissemination and extend the availability of research products, NIDRR will:

(1) Maintain a database of assistive technology products, such as ABLEDATA, that is accessible to consumers and service providers, and is available on the Internet;

(2) Make key publications, such as NIDRR's Program Directory and Compendia of Research products, available on the Internet; and

(3) Establish a management database to track dissemination activities and to identify research results suitable for further dissemination.

Developing Consumer Partnerships

To enlist the target populations in ensuring that disseminated research findings are relevant, accessible, and useful, NIDRR will:

(1) Explore the potential for developing partnerships with independent living centers and State Vocational Rehabilitation agencies to identify, repackage, and market information specific to their needs;

(2) Provide technical assistance to community organizations or public agencies to facilitate the adaptation of research findings into practical use; and

(3) Provide technical assistance and training to consumers and consumer organizations on accessing, interpreting, and using new information, including training on use of electronic information sites and on providing feedback to the research process.

Providing Specialized Assistance To Grantees In Their Dissemination Roles

NIDRR Centers and other grantees are important information resources; and, to enhance their productivity in disseminating the results of their research, NIDRR will:

(1) Promote the publication of research findings in scientific journals and in consumer-oriented publications;

(2) Provide technical assistance for ''translation'' and marketing;

(3) Develop inter-center and inter-project linkages for routine communication and sharing of information;

(4) Assure timely availability of research findings and products in usable form for targeted user groups; and

(5) Provide technical assistance on dissemination and utilization processes to constituency groups.

Using Electronic Media and Telecommunications

Exciting developments in information technology greatly enhance the possibility of reaching more research information users in efficient and effective ways, and to capitalize on this potential, NIDRR will:

(1) Explore the feasibility of an Online Disability News Service, focusing on government-funded research data; funding opportunities; updates from the legislative, judicial, and executive branches of government; awards; achievements; current issues; and problem solving attempts;

(2) Initiate activities to improve the portrayal of individuals with disabilities in the media, including specialized media efforts directed toward the Nation's youth or diverse cultural groups;

(3) Examine the role of distance learning approaches in dissemination;

(4) Explore communications strategies for effective Internet searches for disability-related information, including directories of sites and a thesaurus of key words; and

(5) Provide technical assistance and training to consumers and consumer organizations on accessing, interpreting, and using new information, including training on use of electronic information sites. Emphasize ways to increase the skills and access of elderly and minority consumers to the Internet and other electronic media.

Reaching Out to New Audiences

The changing nature of disability and of the disabled population require thoughtful efforts to reach new audiences. To facilitate these efforts, NIDRR will:

(1) Ensure the accessibility—both in format and content—of all products disseminated by NIDRR and its grantees. This may include the use of alternate formats (e.g., Braille, large print, audiotape, captioned videos) or the use of language appropriate for persons with cognitive impairments or who are non-English speaking;

(2) Improve dissemination of information from NIDRR-funded projects to consumer audiences of culturally diverse backgrounds as well as elderly people, newly disabled individuals, and other people with disabilities who may not be reached by traditional dissemination methods;

(3) Target general audiences that influence the opportunities available to persons with disabilities. These general audiences include employers, manufacturers, educators at all levels, economic development and planning personnel, service establishments, the media, and policymakers at local, State, and national levels; and

(4) Explore ways to involve people with disabilities in all aspects of the research cycle.

Evaluation of Dissemination Methods

Finally, while commercial media efforts are regularly evaluated, little has been done to assess the effectiveness of research dissemination strategies in the disability field. Given the central importance of dissemination to its broad constituency, NIDRR will:

(1) Conduct projects to advance theories in dissemination and utilization and to evaluate the application of the various dissemination and utilization approaches; and

(2) Test methods for measuring the utilization and impact of research results for different target audiences.

Chapter 9: Capacity Building for Rehabilitation Research and Training

Overview

To ensure that research improves the lives of individuals with disabilities, NIDRR will support efforts to enhance the capacity of the field to conduct research that is scientifically excellent and relevant to the concerns of disabled individuals, service providers and the science community. This research will be based in the contextual paradigm of disability, emphasizing cross-disciplinary efforts and participatory research that take into account trends in science and society, and that are reflective of disability culture. Capacity building involves training those who participate in all aspects of the disability research field, including scientists, service providers, and consumers. While NIDRR's programs have made significant contributions to creating the disability and rehabilitation research capability that exists in our Nation today, it will be necessary to

refocus the content, and, to some extent, the structure of those programs to meet the emerging needs of science and consumers. NIDRR will make creative use of funding mechanisms to meet these challenges.

Priorities in Capacity Building

NIDRR interprets its capacity-building responsibilities as multifaceted. NIDRR's principal statutory mandate for training is to support advanced instruction for researchers and service providers. NIDRR also has an implied mandate, strengthened in the 1992 Amendments, to train consumers in the applications of new research knowledge and in the uses of assistive technology. To advance the disability and rehabilitation field, NIDRR will expand the scope of its capacity-building activities to:

(1) Raise the level of rigorous qualitative and quantitative research and increase the use of state-of-the-art methodologies by providing advanced training in disability-related research for scientists, including those with disabilities and those from minority backgrounds;

(2) Train rehabilitation practitioners in the application of research-generated knowledge and new techniques;

(3) Develop the capacity of researchers to conduct research that explicates disability as a contextual phenomenon;

(4) Prepare researchers to conduct Disability Studies that are holistic, interdisciplinary, and cognizant of the cultural context of disability;

(5) Develop the capacity of researchers to conduct studies in new settings, (e.g., homes, work places, schools, recreational facilities, community-based organizations); and

(6) Train consumers, family members, and advocates in the use of research findings, in part to facilitate participatory research efforts.

Additional information on each of these priority areas is provided in the following sections.

Training for Advanced Research Studies

It is crucial to NIDRR's mission that research in disability and rehabilitation reflect sound science practices, using rigorous qualitative and quantitative methods. Adherence to sound methodology and research design strengthens the credibility of NIDRR's research and, consequently, the ability of NIDRR's constituencies to use the research findings in advocacy, service delivery, and policymaking. To this end, NIDRR will increase its emphasis on scientific rigor in generating research agendas and in reviewing research applications. Scientific rigor may encompass methodological approaches such as controlled studies, longitudinal studies, or increased sample size. Constructing carefully defined hypotheses tied to theory is an important element in improving research methods. For qualitative research efforts, rigor includes strict adherence to analytical frameworks, improved data collection methods, and careful selection of subjects.

The capability to conduct first-rate research depends on several factors: a commitment to learning the multiple skills required for designing scientific studies, selecting appropriate research methods, analyzing data, and interpreting findings. NIDRR will continue its support of research training initiatives, including those that target research training opportunities for minorities and persons with disabilities. This training focus reflects NIDRR's commitment to participatory research methods that enhance the relevance of research findings.

Training in Application of Research Findings

NIDRR Rehabilitation Research and Training Centers (RRTCs) will advance further the statutory requirement to train service providers in application of research findings to real-world needs of persons with disabilities. Training can occur at many levels, including pre-service, graduate, and in-service. NIDRR will support training aimed at transferring research findings into practical use. Such training must be sensitive to the rapidly changing service delivery environment, which is de-emphasizing inpatient care and experiencing growth in post-acute and community settings.

Training in New Paradigm Research

As discussed throughout this Plan, the new paradigm conceives of disability as a function of the interaction between impairments and other personal characteristics and the larger physical, social, and policy environments. Unidimensional and static measures of function, improvement, outcomes, and other aspects of disability and the rehabilitation process will not be sufficient.

Any paradigm of science that limits research to modification of the person's functions without including an equal emphasis on changing the person's environment is not an approach that can capture the important phenomena associated with living as a disabled individual. Nor will it accommodate scientific and social advances in the multiple, interactive sectors of society that will characterize life in the next century. Although developments in both the biological and biomechanical sciences will bring new treatments and devices that will improve personal functions, these advances must be adjusted to meet the demands of the person living in his or her environment of choice doing activities that are of significance to that individual.

A framework for asking new questions for NIDRR-funded research has been provided by the major provisions of the ADA. Researchers must develop measures that capture the contributions of the social and physical environments to the disability. The need for researchers capable of investigating and explicating disability in context, and explaining the adapting process, has several implications for the research training endeavor. The training must:

(1) Emphasize interdisciplinary research and design of methodologies that can test complex hypotheses;

(2) Attract researchers from disciplines not usually involved with disability and rehabilitation research. These include law, economics, architecture, business, marketing, demographics, public policy, and administrative sciences, among others;

(3) Incorporate an understanding of disability policy and Disability Studies among researchers in all disciplines;

(4) Apply the principles of the ADA—universal access and accommodations—in all research areas;

(5) Include consumers in the research endeavor; and

(6) Focus on the ''adapting process,'' which comprises changes in individual performance in response to a physical limitation, and changes in the environment to better accommodate individual needs.

The interaction of these changes provides the basis for understanding how best to proceed in improving participation for people with disabilities.

Supporting Disability Studies

The cultural context of disability is a key element in the emerging field of Disability Studies. Major societal changes have influenced how disability is perceived by those with disabilities and by those who study persons with disabilities. Persons with disabilities are now viewed as individuals who are adapting to challenges (e.g., personal assistance services, assistive technology use, access, accommodation, civil rights) in their response to society (e.g., sociopolitical analysis of activism, disability culture, independent living), and in society's response to them (e.g.,

stigma, policy, economics, transportation, housing). The merging of these issues into an encompassing academic area is the genesis of Disability Studies.

In Disability Studies, there is a convergence of theory, technique, and methodology from a range of disciplines to develop an enhanced understanding of a complex phenomenon. The perspective of the subject group in Disability Studies is reflected in the methodology and body of core knowledge. Individuals from the subject group must have the opportunity to participate in the development and promulgation of the methodologies and the curricula. NIDRR has four long-term objectives for providing priority support to this area:

(1) Creation of a body of knowledge that is comprehensive and holistic;

(2) Training of a cadre of researchers and policymakers familiar with that knowledge base;

(3) Inclusion of the perspectives of individuals with disabilities in designing curriculum and research to reflect the experiences of persons with disabilities; and

(4) Creation of opportunities for individuals with disabilities to study, in a variety of settings, the history, politics, economics, sociology, literature, culture, psychology, and other aspects of disability.

Increasing Capacity for Research Under New Conditions

The research questions and the types of training needed for rehabilitation professionals will change as the paradigms of science change and economic realities force reductions in the duration of rehabilitation service programs. Many rehabilitation researchers today are accustomed to conducting research in hospital-based or other clinical sites, applying methodologies and protocols developed in these traditional settings. In the future, sites for conducting research and for training new rehabilitation scientists will be homes, work places, schools, recreational facilities, and community-based support programs. This change involves adapting to reduced access to subject and control groups, working with paraprofessionals and disabled peers in the data collection effort, and working with shared or preexisting databases. Future research on the effectiveness of interventions will be conceptualized, developed, tested, implemented, validated, and evaluated at venues other than hospitals, rehabilitation facilities, clinics, and other traditional service delivery sites.

Increasing Consumer Capacity and Participatory Research

Consumers and consumer organizations have important roles in the research endeavor, including planning research priorities, assessing real-world relevance, and educating researchers in the realities of their aspirations, needs, obstacles, and daily living conditions. Consumers must also review and evaluate research findings and reinterpret them for application to their lives. Finally, consumers can disseminate and advocate for research. The disabled individual as a whole person operating in a given environment is the focus of NIDRR's research, and it is important that individuals with disabilities willingly provide data about themselves in the role of research subjects.

Consumers are more likely to trust the research endeavor if they believe it is relevant to their needs or if they believe it is conducted with appropriate sensitivity to their concerns. NIDRR will continue to take an active role in forging cooperative partnerships between researchers and the disability community. These endeavors must feature an honest and respectful exchange of knowledge and seek cooperative endeavors around common ground. Study of the social, contextual, and environmental aspects of disability provides a promising impetus for the new, strengthened partnership. NIDRR will support participatory research and Disability Studies as strategies to achieve the goals of an informed and active consumer community. Education, training, awareness, and partnerships are among the techniques that will be used to address this goal.

NIDRR has supported the principle of appropriate and effective participatory research, that is, research that incorporates the perspectives and efforts of persons with disabilities. Participatory research is evaluated by standards of scientific excellence and real-world relevance. NIDRR grantees have developed a number of innovative approaches to implement this principle of participatory research. Additional study of participatory research concepts, fundamental principles, operating guidelines, and most appropriate applications will enhance its future use. NIDRR will sponsor research on the conditions under which participatory research enhances the process and improves the products of research. NIDRR will sponsor research, development, demonstration, and dissemination efforts to enhance the understanding of participatory research applications and techniques.

Funding Mechanisms to Enhance Capacity Building

Clearly, there has been a shift in the social and scientific paradigms used to define, study, and explain disability. Consequently, the training models, research methods, and issues studied also must change. Funding excellent research projects depends, to a large extent, on the quality of grant applications. In turn, the subject matter and quality of research reflect the competencies the investigators acquired in their training. The context for training is nested in the types of programs funded by NIDRR. NIDRR will expand these existing mechanisms—Rehabilitation Research and Training Centers (RRTCs), Advanced Rehabilitation Research Training Grants (ARRTs), Switzer Fellowships, New Scholars Program, and the Minority Enhancement Programs—to help meet future challenges.

Rehabilitation Research Training Centers

NIDRR has a long tradition of funding projects at universities, medical rehabilitation facilities, and vocational and social service agencies. Enhancing the capacity to conduct disability and rehabilitation research requires planning and coordination of three key components of research training: mentors and trainers, relevant topics, and appropriate sites. NIDRR Centers have the critical mass of expertise and knowledge to provide:

(1) Advanced, experiential training for researchers;

(2) Classroom training for researchers and clinicians, at undergraduate and graduate levels;

(3) Short-term training to teach scientists new methodologies;

(4) In-service training for rehabilitation practitioners;

(5) Training for consumers, their families, and representatives in implications and applications of new research-based knowledge;

(6) Community-based training in Disability Studies and related areas, particularly in those centers with a strong focus on independent living, community integration, and policy issues;

(7) Education and training in disability professions and in disability research for individuals with disabilities and for minority individuals; and

(8) Training of rehabilitation educators and educators in a range of related disciplines.

Advanced Rehabilitation Research Training Grants

ARRTs will provide advanced research training that integrates disciplines; teaches research methodology in the environmental, or new paradigm, context; and promotes capacity for Disability Studies. These training programs must operate in interdisciplinary environments and provide training in rigorous scientific methods.

Mary Switzer Fellowships

These fellowships will augment scholarly knowledge in the field and function in an integrative capacity to define new frontiers of disability and rehabilitation research. NIDRR plans to provide more opportunities for interaction among the fellows and for exposure to established researchers and policymakers.

New Scholars Program

This program will recruit undergraduates with disabilities to work in NIDRR-funded centers and projects to expose them to disability and rehabilitation research issues, while at the same time providing work experience and income. This program, operated in affiliation with the Dole Foundation, is an innovative private/public partnership aimed at generating interest in research careers for persons with disabilities.

Minority Enhancement Program

This program will focus on Historically Black Colleges and Universities and institutions serving primarily Hispanic, Asian, and American Indian students. NIDRR will evaluate this program to determine the extent to which it is achieving the objectives of Section 21 of the Rehabilitation Act, and to implement necessary strategies to enhance outcomes.

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federal register

Monday
October 26, 1998

Part IV

Department of the Treasury

Community Development Financial Institutions Fund

Notice of Funds Availability (NOFA) Inviting Applications for the Community Development Financial Institutions (CDFI) Program—Core Component and Intermediary Component; Notices

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Funds Availability (NOFA) Inviting Applications for the Community Development Financial Institutions Program—Core Component

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Notice of Funds Availability (NOFA) inviting applications.

SUMMARY: The Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 *et seq.*) (the ''Act'') authorizes the Community Development Financial Institutions Fund (the ''Fund'') of the U.S. Department of the Treasury to select and provide financial and technical assistance to eligible applicants under the Community Development Financial Institutions (''CDFI'') Program. The interim rule (12 CFR part 1805), which was published in the **Federal Register** on April 4, 1997 (62 FR 16444), provides guidance on the contents of the necessary application materials and program requirements. Subject to funding availability, the Fund intends to award up to $50 million in appropriated funds under this NOFA and expects to issue approximately 50 to 65 awards. The Fund reserves the right to award in excess of $50 million in appropriated funds under this NOFA provided that the funds are available and the Fund deems it appropriate. The Fund reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this NOFA.

This NOFA is in connection with the Core Component of the CDFI Program. The Core Component provides direct assistance to CDFIs that serve their target markets through loans, investments and other activities. (These primary activities do not include the financing of other CDFIs. Elsewhere in this issue of the **Federal Register**, the Fund is publishing a separate NOFA for the third round of the Intermediary Component of the CDFI Program. The Intermediary Component provides financial assistance to CDFIs that provide financing primarily to other CDFIs and/or to support the formation of CDFIs.)

DATES: Applications may be submitted at any time following October 26, 1998. The deadline for receipt of an application is 6 p.m. EST on January 21, 1999. Applications received in the offices of the Fund after that date and time will be rejected and returned to the sender. Applications sent electronically or by facsimile will not be accepted.

ADDRESSES: Applications shall be sent to: Awards Manager, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW, Suite 200 South, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: If you have any questions about the programmatic requirements for this program, contact the CDFI Program Manager. Should you wish to request an application package or have questions regarding application procedures, contact the CDFI Awards Manager. They may be reached by phone at (202) 622–8662, by facsimile at (202) 622–7754 or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. Allow at least one to two weeks for the receipt of the application package. Applications and other information regarding the Fund and its programs may be downloaded from the Fund's website at http://www.treas.gov/cdfi.

SUPPLEMENTARY INFORMATION:

I. Background

Credit and investment capital are essential ingredients for creating and retaining jobs, developing affordable housing, starting or expanding businesses, revitalizing neighborhoods, and empowering people. As a key urban and rural policy initiative, the CDFI Program is fostering the creation of a national network of financial institutions that are specifically dedicated to funding and supporting community development. This strategy will build strong institutions that make loans and investments and provide services to economically distressed investment areas and disadvantaged targeted populations. The Act, which implements this vision, authorizes the Fund to select entities to receive financial and technical assistance. Institutions in operation at the time of application are eligible to receive assistance to expand their activities. New institutions are eligible to receive start-up assistance. This NOFA invites applications from eligible organizations for financial assistance, technical assistance, or both, for the purpose of promoting community development activities, including relatively new approaches to meeting the needs of underserved populations such as:

(a) Efforts to design and implement financial services for low-and moderate-income people, such as deposit accounts eligible for the electronic receipt of Federal benefit payments under the Department of Treasury's Electronic Funds Transfer (EFT '99) program;

(b) Programs, including a new Federal program authorized this year, to encourage low-and moderate-income persons to accumulate personal savings, such as through Individual Development Accounts (IDAs) that provide matching contributions for each dollar saved; and

(c) Programs that provide technical assistance (TA) to prospective and current small business borrowers, such as evaluating business plans, financial analysis of debt service capacity and key financial ratios, cash flow analysis, and referrals to other TA providers.

These TA programs may be structured as one-on-one consulting, classroom and group training, peer group formats or as boards of advisors.

The program connected with this NOFA constitutes the Core Component of the CDFI Program, involving direct financial and TA to CDFIs that serve their target markets through loans, investments and other activities. This NOFA does not support CDFIs that primarily are funding other CDFIs. Under this Core Component NOFA, the Fund has an anticipated maximum award of $2.5 million per applicant. However, the Fund, in its sole discretion, reserves the right to award amounts in excess of the anticipated maximum award amount if the Fund deems it appropriate.

Elsewhere in this issue of the **Federal Register**, the Fund is publishing a separate NOFA for the third round of the Intermediary Component of the CDFI Program. The Intermediary Component NOFA is issued in recognition of the fact that many CDFIs may have specialized needs which the Fund can most effectively address by supporting intermediary CDFIs that, in turn, address such specialized needs.

An applicant under the Intermediary Component NOFA shall meet the eligibility requirements set forth at § 1805.200. An additional requirement imposed upon each Intermediary Component applicant under § 1805.200(a)(3) is that it must primarily focus on financing CDFIs or CDFIs in formation. To illustrate the concept, an Intermediary CDFI may have a specialized niche or niches focusing on financing a specific type or types of CDFIs, providing small amounts of capital per CDFI, financing CDFIs with specialized risk levels, or financing CDFIs being formed or organized but which are not yet CDFIs. By providing financial assistance to specialized intermediaries, the Fund believes it can leverage the expertise of such

intermediaries and strengthen the Fund's capacity to support the development and enhancement of the CDFI industry.)

II. Eligibility

The Act and the interim rule specify the eligibility requirements that each applicant must meet in order to be eligible to apply for financial assistance, TA, or both under this Core Component NOFA. At the time an entity submits its application, the entity must be duly organized and validly existing under the laws of the jurisdiction in which it is incorporated or otherwise established. An entity must meet, or propose to meet, the CDFI certification requirements. In general, a CDFI must have a primary mission of promoting community development, provide lending or investments, serve an investment area or a targeted population, provide development services, maintain community accountability, and be a non-government entity. The details regarding these requirements and other program requirements are described in the application packet and the interim rule.

A CDFI, or proposed CDFI, whose primary focus is financing other CDFIs and/or providing financing to support the formation of CDFIs shall not be eligible for an award under this NOFA, but instead may be eligible for an award under the NOFA on the Intermediary Component published elsewhere in this issue of the **Federal Register**.

III. Types of Assistance

An applicant may submit an application for financial assistance, TA, or both under this Core Component NOFA. Financial assistance may be provided through an equity investment, a grant, a loan, deposits, credit union shares, or any combination thereof. Applicants for financial assistance shall indicate the dollar amount, form, and terms and conditions of assistance requested. Applicants for TA under this NOFA shall describe the types of TA requested, the provider(s) of the TA, the cost of the TA, and a narrative justification of its needs for the TA.

IV. Application Packet

Except as described hereafter, an applicant under this NOFA, whether applying for financial assistance, TA, or both, shall submit the materials described in § 1805.701 and the application packet.

If an applicant is currently certified as a CDFI by the Fund, it may submit a copy of the Fund's letter of certification and the Certification of Material Changes form, a copy of which is contained in the application packet, in lieu of the information described in §§ 1805.701(b) (1)–(8). However, an applicant should include information in its application that it believes is relevant to the Fund's substantive review of the application under § 1805.802(b) and this NOFA.

V. Matching Funds

Applicants responding to this NOFA must obtain matching funds from sources other than the Federal Government on the basis of not less than one dollar for each dollar of financial assistance provided by the Fund. Such matching funds shall be at least comparable in form and value to the financial assistance provided by the Fund. Non-Federal funds obtained or legally committed on or after January 1, 1997 may be considered when determining matching funds availability. Applicants selected to receive assistance under this NOFA must have firm commitments for the matching funds required under § 1805.600 by no later than August 31, 1999. The Fund may recapture and reprogram funds if an applicant fails to raise the required match by such date. The Fund reserves the right to grant an extension of such matching funds deadline for specific applicants selected for assistance if the Fund deems it appropriate. Funds used by an applicant as matching funds for a previous award under the CDFI Program or under another Federal grant or award program cannot be used to satisfy the § 1805.600 matching funds requirement.

VI. Evaluation Factors

Applications will be evaluated on a competitive basis in accordance with the criteria described in 12 CFR 1805.802(b) and this NOFA. Also, applications will be reviewed for eligibility and completeness purposes under 12 CFR 1805.802(a) and this NOFA. The Fund reserves the right to conduct eligibility and completeness reviews under § 1805.802(a) and this NOFA concurrently with its substantive review under § 1805.802(b) and this NOFA.

In conducting its substantive review, the Fund will initially evaluate applications using a 300 maximum point scale as follows:

(a) Financial Strength and Organizational Capacity (12 CFR 1805.802(b)(1)), 150 points maximum;

(1) The applicant's track record, financial strength and current operations (including its general financial operations and lending/investment operations), 25 points for established groups, 5 points for start-ups;

(2) The capacity, skills, and experience of the management team and other key personnel (overall organizational structure, lending/investing activities, community development experience), 75 points for established groups, 95 points for start-ups;

(3) The quality of the comprehensive business plan (identification of community needs, market analysis, strategies for addressing needs and demand, implementation strategy including any community partnerships, and identifying risks and assumptions), 50 points;

(b) External Resources 12 CFR 1805.802(b)(2), 50 points maximum; and

(c) Community Impact and Community Partnerships (if applicable), 12 CFR 1805.802(b)(3) and (4), 100 points maximum.

As shown above, the Fund will utilize two different 150 point scales for the Financial Strength and Organizational Capacity criteria depending on whether an applicant is deemed by the Fund to be a start-up organization or an established organization. The Fund defines a start-up organization as an entity that has been in operation for less than two years. The Fund will find an organization to be a start-up if it began incurring operating expenses after October 26, 1996, based on a review of submitted income and expense statements and/or other statements submitted by an applicant as part of its application. In evaluating applications of start-up organizations against the Financial Strength and Organizational Capacity criteria, the Fund will place greater emphasis on the experience, strength and background of an applicant's management team and key personnel than on the breadth and depth of its financial resources and trends in operating performance.

Once the initial evaluation is completed, the Fund will determine which applications will receive further consideration for funding based on the application scores (standardized if deemed appropriate), the recommendations of the individuals performing the initial reviews and the amount of funds available. The Fund anticipates that most applications will not be selected for additional consideration. Those applicants selected for further review or a second stage evaluation may receive an on-site interview conducted by Fund staff in accordance with 12 CFR 1805.800 for purposes of obtaining clarifying or confirming information. A final review panel will consider the results of the

initial and second stage evaluations and the geographic and institutional diversity of those applicants being considered for funding in accordance with 12 CFR 1805.801 and 1805.802(b)(5). The final review panel will make recommendations to the Fund's selecting official.

While previous awardees are eligible to apply under this NOFA, such applicants should be aware that success in a previous round should not be considered indicative of the likelihood of success under this NOFA. At the same time, organizations will not be penalized for having received awards in a previous round or rounds, except to the extent provided by 12 CFR 1805.502(a) which prohibits the Fund, except in certain circumstances, from providing more than $5 million in assistance to any organization and its subsidiaries and affiliates during any three-year period.

The anticipated maximum award per applicant under this NOFA is $2.5 million. However, the Fund, in its sole discretion, reserves the right to make individual award amounts in excess of $2.5 million if it deems it appropriate.

VII. Workshops

The Fund expects to host workshops in November and December of this year to disseminate information to organizations interested in applying for assistance under this NOFA. If you wish to be on a mailing list to receive information about such workshops, please fax your request to the Fund.

Authority: 12 U.S.C. 4703, 4703 note, 4704, 4706, 4707, and 4717; 12 CFR part 1805.

Dated: October 20, 1998.

Maurice A. Jones,

Deputy Director for Policy and Programs, Community Development Financial Institutions Fund.

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DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Funds Availability (NOFA) Inviting Applications for the Community Development Financial Institutions (CDFI) Program—Intermediary Component

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Notice of Funds Availability (NOFA) inviting applications.

SUMMARY: The Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 et seq.) (the ''Act'') authorizes the Community Development Financial Institutions Fund (''the Fund'') to select and provide assistance to eligible applicants under the Community Development Financial Institutions (''CDFI'') Program. The interim rule (12 CFR part 1805), which was published in the **Federal Register** on April 4, 1997 (62 FR 16444), provides guidance on the contents of application materials and program requirements. This NOFA is in connection with the third competitive round of the Intermediary Component of the CDFI Program. This Intermediary Component will provide financial assistance to CDFIs that provide financing primarily to other CDFIs and/or to support the formation of CDFIs. Subject to the availability of funds, the Fund currently anticipates making awards of up to $7.5 million in appropriated funds pursuant to this NOFA. The Fund reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this NOFA. Also being published elsewhere in this issue of the **Federal Register** is a separate NOFA in connection with the Core Component of the CDFI Program, with respect to which the Fund intends to make available up to $50 million in appropriated funds.

DATES: Applications may be submitted at any time after October 26, 1998. The deadline for receipt of an application is 6:00 p.m. EST on January 19, 1999. Applications received in the offices of the Fund after that date and time will be rejected and returned to the sender. Applications sent to the Fund electronically or by facsimile will not be accepted.

The Fund anticipates making available up to $7.5 million in appropriated funds under this NOFA. The anticipated maximum aggregate award per applicant under this NOFA is $1.5 million. However, the Fund, in its sole discretion, reserves the right to award amounts in excess of $1.5 million for an applicant(s) if it deems it appropriate.

ADDRESSES: Applications shall be sent to: Awards Manager, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street NW., Suite 200 South, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: If you have any questions about the program requirements for this program, contact the CDFI Program Manager. Should you wish to request an application package or have any questions regarding application procedures, contact the CDFI Awards Manager. They may be reached by phone at (202) 622–8662, by facsimile on (202) 622-7754 or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. Allow at least one to two weeks for the receipt of the application package. Applications and other information regarding the Fund and its programs may be downloaded from the Fund's website at http://www.treas.gov/cdfi.

SUPPLEMENTARY INFORMATION:

I. Background

Credit and investment capital are essential ingredients for creating and retaining jobs, developing affordable housing, starting or expanding businesses, revitalizing neighborhoods, and empowering people. As a key urban and rural policy initiative, the CDFI Program is facilitating the creation of a national network of financial institutions that are specifically dedicated to community development. This strategy will build strong institutions that make loans and investments and provide services to economically distressed investment areas and disadvantaged targeted populations. This NOFA is in connection with the Intermediary Component of the CDFI Program.

Elsewhere in this issue of the **Federal Register**, the Fund is publishing a NOFA for financial and technical assistance to CDFIs pursuant to the direct funding approach of the Core Component of the CDFI Program. The Fund anticipates that it will devote the great bulk of the financial assistance available for the CDFI Program to the Core Component. In the separate NOFA for the Core Component, the Fund is making available up to $50 million in appropriated funds.

The Fund also recognizes that to address the diverse needs and take full advantage of the enormous potential of the growing CDFI industry, it is important that the Fund be on the cutting edge of innovation by expanding the tools it utilizes to assist CDFIs. This NOFA in connection with the Intermediary Component of the CDFI Program is one part of a broader effort to develop and make available such new tools. Under the Intermediary Component NOFA, the Fund has an anticipated maximum award for $1.5 million per applicant. However, the Fund, in its sole discretion, reserves the right to award amounts in excess of the anticipated maximum award amount if the Fund deems it appropriate.

The Fund recognizes that there are in existence certain intermediary CDFIs, and that others may be created over time, that focus their financing activities primarily on financing other CDFIs. Such institutions may have knowledge and capacity to develop and implement a specialized niche or niches in their financing of CDFIs and/or CDFIs in formation. The Fund believes that providing financial assistance to such intermediaries can be an effective way to enhance its support of the CDFI industry. To illustrate the concept of an intermediary CDFI with a few examples, an intermediary may have a specialized niche or niches focusing on financing a specific type or types of CDFIs, providing small amounts of capital per CDFI, financing CDFIs with specialized risk levels, or financing institutions seeking to become CDFIs. By providing financial assistance to specialized intermediaries, the Fund believes it can leverage the expertise of such intermediaries and strengthen the Fund's capacity to support the development and enhancement of the CDFI industry. This NOFA invites applications from CDFIs, and organizations seeking to become CDFIs, that are or plan to become a specialized CDFI intermediary, focusing on providing loans to, or investments in, other CDFIs and/or to support the formation of CDFIs. This NOFA is not intended and should not be construed to allow an applicant to file a joint application on behalf of a group of other CDFIs, but rather to provide financial assistance to intermediaries that have criteria for financing, in arms-length transactions, other CDFIs and/or to support the formation of CDFIs.

This NOFA implements the third round of the Intermediary Component. Many CDFIs will be facing the decision of whether they should devote the substantial time and effort necessary to prepare an application, due by January 21, 1999, in response to the Core Component NOFA published elsewhere in this issue of the **Federal Register**. Given what is expected to be the highly competitive nature of the Core Component round, many CDFIs may decide not to apply for the Core Component, but instead to concentrate on seeking assistance from a CDFI intermediary.

II. Eligibility

An applicant for assistance pursuant to this NOFA must meet the eligibility requirements found in § 1805.200. At the time an entity submits an application, the entity must be duly organized and validly existing under the laws of the jurisdiction in which it is incorporated or otherwise established. In addition, under § 1805.200(a)(3), this NOFA is limited to applicants that satisfy the following requirements:

(1) The applicant's financings (loans and/or development investments) must primarily focus on financing other CDFIs and/or supporting the formation of CDFIs; or

(2) If (a) the applicant is not a CDFI; or

(b) If the applicant's financings do not primarily focus on financing and/or supporting the formation of CDFIs at the time of application, the application shall include a realistic plan for the applicant to meet both criteria (a) and (b) within one year of the date on which the Fund approves the applicant for financial assistance (which period may be extended at the sole discretion of the Fund). In no event will the Fund disburse assistance to the applicant until the applicant can be certified as a CDFI and demonstrates that its financings primarily focus on other CDFIs and/or the formation of CDFIs.

III. Types of Assistance

An applicant may submit an application for financial assistance in the form of an equity investment, loan, or grant (or a combination of these financial assistance instruments). Applicants for financial assistance shall indicate the dollar amount, form, terms, and conditions of assistance requested. The Fund will not accept applications for technical assistance under this NOFA.

Since an intermediary that is selected under this NOFA must be a CDFI when funded, its predominant business activity must, per § 1805.701(b)(4), be the provision of loans and/or development investments. Thus, even if an intermediary applicant receives a grant from the Fund, the Fund will normally expect that the intermediary will use such grant to enhance its ability to make loans and/or development investments in CDFIs or to support the formation of CDFIs. However, the Fund will consider requests by an intermediary applicant to utilize Fund assistance to enhance the ability of the intermediary to make grants to CDFIs or to support the formation of CDFIs, as long as the intermediary applicant demonstrates to the satisfaction of the Fund that using Fund assistance in this manner will further the purposes of the Act, and as long as the intermediary's predominant business activity will remain the provision of loans and/or development investments.

IV. Application Packet

Except as described hereafter, an applicant shall submit the materials described in § 1805.701 and the application packet.

If an applicant is currently certified as a CDFI, it may, at its option, submit a copy of the letter of certification and the certification of material changes form, a copy of which is contained in the application package, in lieu of the information requested in Part III.B., 1 through 8, of the application packet. However, an applicant should include in its application information that it believes is relevant to the substantive review of the application specified in § 1805.802(b) and this NOFA.

Since the target markets served by an applicant under this NOFA will depend on the target markets served by CDFIs funded by the applicant, the applicant need not fill out Part III.B.3, C. Map of Investment Area(s), 4. Studies or Analyses of Unmet Needs, or 9. Target Market Designation, or 10. Investment Area Designation Worksheet. Instead, the applicant should describe its target markets, which description may include target markets that are regional or national in scope. The application should include an analysis of target markets served by CDFIs and/or CDFIs in formation which the applicant currently finances, and what changes in such target markets, if any, may be expected if the applicant receives financial assistance from the Fund. If applicable, the applicant should provide an all-inclusive list of CDFIs or CDFIs in formation that it has financed, and the amount and form of financing, over at least the last three years.

V. Matching Funds

Applicants responding to this NOFA must obtain matching funds from sources other than the Federal Government on the basis of not less than one dollar for each dollar of assistance provided by the Fund. Such matching funds shall be at least comparable in form and value to the assistance provided by the Fund. Non-Federal funds obtained or legally committed on or after January 1, 1997 may be considered when determining matching funds availability. Applicants selected to receive assistance under this NOFA must have firm commitments for the matching funds required under § 1805.600 by no later than August 31, 1999. The Fund may recapture and reprogram funds if an applicant fails to raise the required match by such date. The Fund reserves the right to extend such matching funds deadline for specific applicants selected for

assistance if the Fund deems it appropriate.

VI. Evaluation Factors

Applications will be evaluated on a competitive basis in accordance with the criteria described in 12 CFR 1805.802(b) and this NOFA. Also, applications will be reviewed for eligibility and completeness purposes under 12 CFR 1805.802(a) and this NOFA. The Fund reserves the right to conduct eligibility and completeness reviews under § 1805.802(a) and this NOFA concurrently with its substantive review under § 1805.802(b) and this NOFA.

In conducting its substantive review, the Fund will initially evaluate applications using a 300 maximum point scale as follows:

(a) Financial Strength and Organizational Capacity (12 CFR 1805.802(b)(1)), 150 points maximum;

(1) The applicant's track record, financial strength and current operations (including its general financial operations and lending/investment operations), 25 points for established groups, 5 points for start-ups;

(2) The capacity, skills, and experience of the management team and other key personnel (overall organizational structure, lending/investing activities, community development experience), 75 points for established groups, 95 points for start-ups;

(3) The quality of the comprehensive business plan (identification of community needs, market analysis, strategies for addressing needs and demand, implementation strategy including any community partnerships, and identifying risks and assumptions), 50 points;

(b) External Resources 12 CFR 1805.802(b)(2), 50 points maximum; and

(c) Community Impact and Community Partnerships (if applicable) 12 CFR 1805.802(b)(3) and (4), 100 points maximum.

As shown above, the Fund will utilize two different 150 point scales for the Financial Strength and Organizational Capacity criteria depending on whether an applicant is deemed by the Fund to be a start-up organization or an established organization. The Fund defines a start-up organization as an entity that has been in operation for less than two years. The Fund will find an organization to be a start-up if it began incurring operating expenses after October 26, 1996, based on a review of submitted income and expense statements and/or other statements submitted by an applicant as part of its application. In evaluating applications of start-up organizations against the Financial Strength and Organizational Capacity criteria, the Fund will place greater emphasis on the experience, strength and background of an applicant's management team and key personnel than on the breadth and depth of its financial resources and trends in operating performance.

Once the initial evaluation is completed, the Fund will determine which applications will receive further consideration for funding based on the application scores (standardized if deemed appropriate), the recommendations of the individuals performing the initial reviews and the amount of funds available. Those applicants selected for further review or a second stage evaluation may receive an on-site interview conducted by Fund staff in accordance with 12 CFR 1805.800 for purposes of obtaining clarifying or confirming information. A final review panel will consider the results of the initial and second stage evaluations and the geographic and institutional diversity of the target markets of those applicants being considered for funding under 12 CFR 1805.802(b)(5). The final review panel will make recommendations to the Fund's selecting official.

While previous awardees are eligible to apply under this NOFA, such applicants should be aware that success in a previous round should not be considered indicative of the likelihood of success under this NOFA. At the same time, organizations will not be penalized for having received awards in a previous round or rounds, except to the extent provided by 12 CFR 1805.502(a) which prohibits the Fund, except in certain circumstances, from providing more than $5 million in assistance to any organization and its subsidiaries and affiliates during any three-year period.

The anticipated maximum award per applicant under this NOFA is $1.5 million. However, the Fund, in its sole discretion, reserves the right to make individual award amounts in excess of $1.5 million if it deems it appropriate.

VII. Workshops

The Fund expects to host workshops in November and December of this year to disseminate information to organizations interested in applying for assistance under this NOFA. If you wish to be on a mailing list to receive information about such workshops, please fax your request to the Fund.

Authority: 12 U.S.C. 4703, 4703 note, 4704, 4706, 4707, and 4717; 12 CFR part 1805.700.

Dated: October 20, 1998.

Maurice A. Jones,

Deputy Director for Policy and Programs, Community Development Financial Institutions Fund.

[FR Doc. 98–28515 Filed 10–23–98; 8:45 am]

BILLING CODE 4810–70–P

federal register

Monday
October 26, 1998

Part V

Pension Benefit Guaranty Corporation

29 CFR Parts 4022 and 4044

Lump Sum Payment Assumptions; Proposed Rule

Valuation of Benefits; Use of Single Set of Assumptions for All Benefits; Proposed Rule

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

RIN 1212–AA92

Lump Sum Payment Assumptions

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intent to propose rulemaking.

SUMMARY: The PBGC is considering: Discontinuing use of its existing lump sum assumptions for payment purposes and replacing them with a modified version of its existing annuity assumptions, effective sometime after December 2000, and discontinuing calculation and publication of its existing lump sum interest rates at, or sometime after, the time the PBGC discontinues their use. Because this may raise issues for plans and participants, the PBGC is specifically soliciting public comment on: the assumptions the PBGC should use to value its lump sums after 2000, how long the PBGC should continue to calculate and publish its existing lump sum interest rates, if it were to discontinue their use, and any potential actions that the PBGC could take to lessen the potential consequences that would arise if the PBGC were to discontinue use—or calculation and publication as well as use—of its existing lump sum interest rates. The Internal Revenue Service has requested that the PBGC solicit public comments on its behalf concerning the qualification issues that may arise in the context of possible changes to the PBGC interest rates.

DATES: Comments must be received on or before December 28, 1998.

ADDRESSES: Comments to the PBGC may be mailed to the Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to Suite 340 at the above address. Comments to the PBGC also may be sent by Internet e-mail to reg.comments@pbgc.gov. Comments to the PBGC will be available for public inspection at the PBGC's Communications and Public Affairs Department, Suite 240. Comments to the Internal Revenue Service may be sent by mail to: Internal Revenue Service, PO Box 7604, Ben Franklin Station, Attn: CC:EBEO:BR1(REG–209759–95), Room 5226, Washington, DC 20044; or may be hand delivered between the hours of 8 a.m. and 5 p.m. to CC:DOM:CORP:R (REG–209759–95), Courier's Desk, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC. Alternatively, comments to the Internal Revenue Service may be submitted via the Internet at http://www.irs.ustreas.gov/prod/tax__regs/comments.html. Comments to the Internal Revenue Service will be available for public inspection at the Freedom of Information Reading Room, Room 1621, Internal Revenue Building, 1111 Constitution Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or James L. Beller, 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:

Background

When a plan terminates in a distress or involuntary termination, the PBGC values the plan's benefits in order to allocate assets to benefits in accordance with the priority categories established under section 4044 of ERISA. This allocation affects the amount of the PBGC's employer liability claim (representing the entire plan underfunding) and participant benefit entitlements beyond guaranteed benefits (*i.e.*, nonguaranteed benefits that are funded either by plan assets or, pursuant to ERISA section 4022(c), by PBGC recoveries on its employer liability claims). The PBGC also values each benefit to determine whether it is *de minimis* and therefore payable as a lump sum (and, if so, in what amount) under ERISA section 4022 and 29 CFR part 4022. The assumptions used to value benefits for purposes of sections 4022 and 4044 are in part 4044 of the PBGC's regulations.

The PBGC has historically derived its interest rate assumptions by surveying private sector annuity prices and selecting a valuation interest rate (or rates) that, when combined with the PBGC's mortality assumptions, accurately replicates the price structure reflected in the survey. When the PBGC updated its assumptions in 1993 (58 FR 50812 (September 28, 1993)), it noted that its historical interest rates—derived based on UP–84 mortality assumptions—were lower than they would have been under the more current GAM–83 mortality assumptions then in use by many private sector insurers. The PBGC stated, ''Even though the combination of mortality and interest assumptions accurately replicates private sector group annuity prices, the disparity between the PBGC's low interest rates and familiar private sector rates has resulted in public confusion over the PBGC's interest rate assumptions.'' 58 FR 5128, 5129 (January 19, 1993).

The PBGC updated its assumptions in 1993 to reflect, among other things, the more current GAM–83 mortality assumptions (thereby increasing the PBGC's derived interest rates), but only for benefits that must be paid as annuities. The PBGC did not extend the updated assumptions to benefits payable as lump sums because Congress had set the PBGC lump sum interest rates as the interest rate ceiling (and thus the value floor) for private-sector lump sums. The use of the more current GAM–83 mortality assumptions would have increased the lump sum interest rates and thereby decreased private sector lump sum values.

The PBGC stated that it would defer updating its lump sum assumptions pending legislative action. *See* 58 FR 5130–31 (January 19, 1993); 58 FR 50812, 50814 (September 28, 1993). The Retirement Protection Act of 1994 (''RPA'') eliminated the connection between the PBGC's lump sum interest assumptions and the interest rates that private plans are required to use to value lump sum benefits.

In a separate notice published elsewhere in today's **Federal Register**, the Pension Benefit Guaranty Corporation is proposing to use a single set of valuation assumptions—those currently used by the PBGC to value benefits to be paid as annuities—for purposes of allocating assets to all benefits under section 4044 of ERISA. The PBGC will continue to use its existing lump sum interest rates for lump sum payment purposes under ERISA section 4022 for plans with termination dates through at least December 2000. This is because, under RPA, plans may continue to use PBGC interest rates as the ''applicable interest rate'' under Code section 417(e)(3) for distributions in plan years beginning as late as December 1999.

New PBGC Lump Sum Assumptions

The PBGC is considering replacing its existing lump sum assumptions for payment purposes under Part 4022 with a modified version of its annuity assumptions under Part 4044. The interest and other assumptions (*e.g.*, expected retirement age) under part 4022 would generally be the same as those used under part 4044 for annuity valuations. However, the PBGC will use a unisex mortality table for lump sum payment purposes. The PBGC is

currently reviewing its part 4044 mortality assumptions (currently GAM–83) as part of a separate rulemaking. *See* March 19, 1997, Notice of Intent to Propose Rulemaking (62 FR 12982). The specific unisex mortality table will depend upon the mortality table adopted in that rulemaking.

In addition, the PBGC is considering whether the amount of lump sum benefits should include an expense load to reflect that the PBGC charges an expense load to the employer. In the past, the PBGC lump sum payment included a load because its lump sum interest rates implicitly included that load. The annuity assumptions from which the new lump sum assumptions would be derived provide for an explicit loading charge that can easily be excluded from lump sum payments. Although the PBGC charges the employer for a load, it generally incurs at least most of the expenses reflected in this charge even when it pays a benefit in lump sum form. *See* 58 FR 5128, 5131 (January 19, 1993).

Effect on Ongoing and Other Nontrusteed Plans

Only those plans trusteed by the PBGC would be affected directly if the PBGC were to discontinue use of its existing lump sum interest rates sometime after 2000. However, plans not trusteed by the PBGC could be affected indirectly. While the PBGC's lump sum rates will no longer be the ''applicable interest rate'' for purposes of Code section 417(e)(3) and ERISA section 205(g)(3) after 2000, some plans may nonetheless continue to provide for the use of the PBGC's lump sum interest rates (if these rates produce a larger distribution for the participant than required under Code section 417(e)(3) and ERISA section 205(g)(3)), on a permanent basis or for a transitional period that extends beyond 2000. These plans may face interpretive issues or unintended consequences. For example, if the PBGC continues to calculate and to publish its historical lump sum interest rates, and a plan refers to the interest rates used by the PBGC to determine lump sum values, there is a question whether this should be interpreted as a reference to the PBGC's new assumptions for determining lump sum values or the rates the PBGC continues to publish based on its former methodology. Similar issues may arise in the case of an annuity contract that provides for use of the PBGC's lump sum interest rates.

In addition to discontinuing use of its existing lump sum assumptions, the PBGC is considering discontinuing calculation and publication of its existing lump sum interest rates sometime after 2000 because these rates are derived under the assumption that present values are calculated using the UP–84 mortality table, which will become increasingly outdated. The interest rate assumptions that are derived in connection with the use of the UP–84 mortality table are lower than those that are derived in connection with the use of a more current mortality table. The PBGC recognizes that discontinuing calculation and publication of these rates would raise additional issues for plans that provide for payment of a lump sum equal to the value produced by these rates, and may raise issues in the case of collective bargaining agreements and annuity contracts that reference these rates.

The Internal Revenue Service has informed the PBGC that, in the context of possible changes to the PBGC interest rates, employers' responses (such as plan amendments or plan interpretations that have the effect of reducing participants' benefits) might cause plans to fail to satisfy the plan qualification requirements of the Internal Revenue Code. The Internal Revenue Service notes that, depending on plan language, issues may arise regarding whether a plan provides definitely determinable benefits, is operated in accordance with its terms, or complies with the requirements of section 411(d)(6). For example, a violation of section 411(d)(6) may occur if a plan is amended to eliminate use of the PBGC's existing lump sum interest rates (or to substitute an alternative interest rate for the PBGC's existing lump sum rates) with respect to benefits that have accrued before the later of the adoption date or the effective date of the amendment, unless the amendment is within the confines of the explicit relief provided in connection with plan amendments that substitute the 30-year Treasury rate for the PBGC interest rate under section 767(d)(2) of RPA and 26 CFR 1.417(e)–1(d)(10)(iii) through (v).

The PBGC is soliciting comments on (1) the assumptions the PBGC should use to value its lump sums after 2000, (2) how long the PBGC should continue to calculate and publish its existing lump sum interest rates, if it were to discontinue their use, and (3) any potential actions that the PBGC could take to lessen the potential consequences that would arise if the PBGC were to discontinue use—or calculation and publication as well as use—of its existing lump sum interest rates. The PBGC will not implement these changes without providing adequate lead time.

The Internal Revenue Service has requested that the PBGC solicit public comments on its behalf concerning the qualification issues that may arise in the context of possible changes to the PBGC interest rates, including the relief under Code section 411(d)(6)(B) that may be appropriate to permit employers to make plan amendments to accommodate the PBGC's change in lump sum interest rate assumptions. For example, it may be appropriate for the Internal Revenue Service to permit an employer to substitute an interest rate that is roughly comparable to the PBGC's existing lump sum rates. Comments on this topic may be sent to the Internal Revenue Service (see **ADDRESSES**).

Issued in Washington, DC, this 21st day of October 1998.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 98–28626 Filed 10–23–98; 8:45 am]

BILLING CODE 7708–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022, 4044, 4050

RIN 1212–AA91

Valuation of Benefits; Use of Single Set of Assumptions for All Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: The Pension Benefit Guaranty Corporation solicits public comment on its proposal to amend its regulations to provide for the use of a single set of valuation assumptions—those currently used by the PBGC to value benefits to be paid as annuities—for purposes of allocating assets to benefits under section 4044 of ERISA.

While the PBGC is proposing to discontinue using its lump sum valuation assumptions for purposes of allocating assets to benefits, it intends to continue using its existing lump sum assumptions for lump sum payment purposes at least through 2000. The PBGC is considering replacing its lump sum payment assumptions, sometime after 2000, with a modified version of its annuity assumptions. In a separate notice published elsewhere in today's **Federal Register**, the PBGC is soliciting public comment on this possible change.

DATES: Comments must be received on or before December 28, 1998.

ADDRESSES: Comments may be mailed to the Office of the General Counsel,

Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to Suite 340 at the above address. Comments also may be sent by Internet e-mail to reg.comments@pbgc.gov. Comments will be available for inspection at the PBGC's Communications and Public Affairs Department in Suite 240 at the above address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or James L. Beller, 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:

Background

In the case of a distress or involuntary termination, the PBGC's regulations prescribe the benefit valuation assumptions used to allocate assets to benefits under section 4044 of ERISA. These regulations currently provide for the use of two sets of assumptions—one for benefits to be paid as annuities and another for benefits payable as lump sums. Whether a benefit is to be paid as an annuity or is payable as a lump sum is determined under section 4022 of ERISA and the PBGC's implementing regulations. (A more detailed discussion of these aspects of the PBGC's regulations is provided in a separate notice published elsewhere in today's **Federal Register**.)

Amendment to Part 4044—Assumptions for Allocation of Assets

The proposed amendments simplify the PBGC's valuation rules by providing that all benefits will be valued for plan asset allocation purposes under ERISA section 4044 by using the PBGC's annuity assumptions, regardless of the form in which payment may be made under section 4022. These amendments will apply to any plan with a termination date on or after the effective date of the final rule. For plans with termination dates before the effective date of the final rule, benefits will continue to be valued for purposes of allocating assets to benefits under the existing regulations.

Amendment to Part 4022—Assumptions for Lump Sum Payments

While the PBGC will no longer use its existing lump sum interest rates (and other assumptions) for purposes of section 4044, it will continue to use them for lump sum payment purposes under section 4022 at least through 2000. (In a separate notice published elsewhere in today's **Federal Register**, the PBGC is soliciting public comment on possible changes after 2000.) Accordingly, the amendment moves these assumptions from part 4044 to part 4022. The PBGC expects that plan lump sum provisions referring to the PBGC's lump sum interest rates under part 4044 will be interpreted as referring to the assumptions used by the PBGC to value lump sums for payment purposes (those proposed to be moved to part 4022).

Part 4050—Missing Participant Assumptions

The PBGC is making non-substantive changes to the definition of ''missing participant lump sum assumptions'' and ''missing participant annuity assumptions'' in its Missing Participants regulation (Part 4050) to conform to the amendments to parts 4022 and 4044.

E.O. 12866 and the Regulatory Flexibility Act

The PBGC has determined that this proposed rule is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866. The PBGC certifies that, if adopted, the amendment will not have a significant economic effect on a substantial number of small entities. The amendments generally affect only the valuation of *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 Part 4022

Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Pension insurance, Pensions.

29 CFR Part 4050

Pensions, Reporting and recordkeeping requirements.

For the reasons set forth above, the PBGC proposes to amend parts 4022, 4044, and 4050 of 29 CFR chapter XL as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

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

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

2. In § 4022.7, paragraph (d) is revised to read as follows:

§ 4022.7 Benefits payable in a single installment.

* * * * *

(d) *Determination of lump sum amount.* For purposes of paragraph (b)(1)(i)–(iii) of this section, the lump sum value of a benefit shall be calculated by valuing the monthly annuity benefits payable in the form determined under § 4044.51(a) of this chapter and commencing at the time determined under § 4044.51(b) of this chapter. The actuarial assumptions used shall be those described in § 4044.52, except that—

(1) *Loading for expenses.* There shall be no adjustment to reflect the loading for expenses;

(2) *Mortality rates and interest assumptions.* The mortality rates in appendix A to this part and the interest assumptions in appendix B to this part shall apply; and

(3) *Date for determining lump sum value.* The date as of which a lump sum value is calculated is the termination date, except that in the case of a subsequent insufficiency it is the date described in section 4062(b)(1)(B) of ERISA.

Appendix to Part 4022—[Redesignated as Appendix C to part 4022]

3. The Appendix to Part 4022 is redesignated as Appendix C to part 4022, and its heading is revised to read ''Appendix C'' to part 4022—Maximum Guaranteeable Monthly Benefit''.

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

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

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

5. Section 4044.52 is revised to read as follows:

§ 4044.52 Valuation of benefits.

The plan administrator shall value all benefits as of the valuation date by—

(a) Using the mortality assumptions prescribed by § 4044.53 and the interest assumptions prescribed in appendix B to this part;

(b) Using interpolation methods, where necessary, at least as accurate as linear interpolation;

(c) Using valuation formulas that accord with generally accepted actuarial principles and practices;

(d) Taking mortality into account during the deferral period of a deferred joint and survivor benefit only with

respect to the participant (or other principal annuitant); and

(e) Adjusting the values to reflect loading expenses in accordance with appendix C to this part.

6. In § 4044.53, the section heading and paragraph (a) are revised to read as follows:

§ 4044.53 Mortality assumptions.

(a) *General rule.* Subject to paragraph (b) of this section (regarding certain death benefits), the plan administrator shall use the mortality factors prescribed in paragraphs (c), (d), and (e) of this section to value benefits under § 4044.52.

* * * * *

§ 4044.54 [Removed and Reserved]

7. Section 4044.54 is removed and reserved.

Appendix A to Part 4044—[Amended]

8. In appendix A to part 4044, Table 3—Lump Sum Mortality Table is redesignated as appendix A to part 4022 with the heading ''Appendix A to part 4022—Lump Sum Mortality Rates''.

Appendix B to Part 4044—[Amended]

9. In appendix B to part 4044, the appendix heading is revised to read ''Appendix B to Part 4044—Interest Rates Used to Value Benefits''; the heading of Table I (''Table I—[Annuity Valuations]'') is removed; and Table II—[Lump Sum Valuations] is redesignated as appendix B to part 4022 with the heading ''Appendix B to part 4022—Lump Sum Interest Rates''.

Appendix C to Part 4044—[Amended]

10. In appendix C to part 4044, the table is amended by removing the reference to ''Table I of appendix B for the valuation of annuities'' and replacing it with a reference to ''appendix B for the valuation of benefits''.

PART 4050—MISSING PARTICIPANTS

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

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

12. In § 4050.2, the definitions of *missing participant annuity assumptions* and *missing participant lump sum assumptions* are revised to read as follows:

§ 4050.2 Definitions.

* * * * *

Missing participant annuity assumptions means the interest rate assumptions and actuarial methods for valuing benefits under § 4044.52 of this chapter, applied——

(1) As if the deemed distribution date were the termination date;

(2) Using the mortality rates prescribed in Revenue Ruling 95–6, 1995–1 C.B. 80;

(3) Without using the expected retirement age assumptions in §§ 4044.55 through 4044.57 of this chapter;

(4) Without making the adjustment for expenses provided for in § 4044.52(e) of this chapter; and

(5) By adding $300, as an adjustment (loading) for expenses, for each missing participant whose designated benefit without such adjustment would be greater than $5,000.

* * * * *

Missing participant lump sum assumptions means the interest rate and mortality assumptions and actuarial methods for determining the lump sum value of a benefit under section 4022.7(d) of this chapter applied —

(1) As if the deemed distribution date were the termination date; and

(2) Without using the expected retirement age assumptions in §§ 4044.55 through 4044.57 of this chapter.

* * * * *

Issued in Washington, D.C., this 21st day of October, 1998.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 98–28627 Filed 10–23–98; 8:45 am]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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H.R. 4112/P.L. 105–275

Legislative Branch Appropriations Act, 1999 (Oct. 21, 1998; 112 Stat. 2430)

H.R. 4194/P.L. 105–276

Making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1999, and for other purposes. (Oct. 21, 1998; 112 Stat. 2461)

H.R. 4328/P.L. 105–277

Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Oct. 21, 1998; 112 Stat. 2681)

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51–199	(869–034–00026–6)	32.00	Jan. 1, 1998
200–499	(869–034–00027–4)	31.00	Jan. 1, 1998
500–End	(869–034–00028–2)	43.00	Jan. 1, 1998
11	(869–034–00029–1)	19.00	Jan. 1, 1998
12 Parts:			
1–199	(869–034–00030–4)	17.00	Jan. 1, 1998
200–219	(869–034–00031–2)	21.00	Jan. 1, 1998
220–299	(869–034–00032–1)	39.00	Jan. 1, 1998
300–499	(869–034–00033–9)	23.00	Jan. 1, 1998
500–599	(869–034–00034–7)	24.00	Jan. 1, 1998
600–End	(869–034–00035–5)	44.00	Jan. 1, 1998
13	(869–034–00036–3)	23.00	Jan. 1, 1998
14 Parts:			
1–59	(869–034–00037–1)	47.00	Jan. 1, 1998
60–139	(869–034–00038–0)	40.00	Jan. 1, 1998
140–199	(869–034–00039–8)	16.00	Jan. 1, 1998
200–1199	(869–034–00040–1)	29.00	Jan. 1, 1998
1200–End	(869–034–00041–0)	23.00	Jan. 1, 1998
15 Parts:			
0–299	(869–034–00042–8)	22.00	Jan. 1, 1998
300–799	(869–034–00043–6)	33.00	Jan. 1, 1998
800–End	(869–034–00044–4)	23.00	Jan. 1, 1998
16 Parts:			
0–999	(869–034–00045–2)	30.00	Jan. 1, 1998
1000–End	(869–034–00046–1)	33.00	Jan. 1, 1998
17 Parts:			
1–199	(869–034–00048–7)	27.00	Apr. 1, 1998
200–239	(869–034–00049–5)	32.00	Apr. 1, 1998
240–End	(869–034–00050–9)	40.00	Apr. 1, 1998
18 Parts:			
1–399	(869–034–00051–7)	45.00	Apr. 1, 1998
400–End	(869–034–00052–5)	13.00	Apr. 1, 1998
19 Parts:			
1–140	(869–034–00053–3)	34.00	Apr. 1, 1998
141–199	(869–034–00054–1)	33.00	Apr. 1, 1998
200–End	(869–034–00055–0)	15.00	Apr. 1, 1998
20 Parts:			
1–399	(869–034–00056–8)	29.00	Apr. 1, 1998
400–499	(869–034–00057–6)	28.00	Apr. 1, 1998
500–End	(869–034–00058–4)	44.00	Apr. 1, 1998
21 Parts:			
1–99	(869–034–00059–2)	21.00	Apr. 1, 1998
100–169	(869–034–00060–6)	27.00	Apr. 1, 1998
170–199	(869–034–00061–4)	28.00	Apr. 1, 1998
200–299	(869–034–00062–2)	9.00	Apr. 1, 1998
300–499	(869–034–00063–1)	50.00	Apr. 1, 1998
500–599	(869–034–00064–9)	28.00	Apr. 1, 1998
600–799	(869–034–00065–7)	9.00	Apr. 1, 1998
800–1299	(869–034–00066–5)	32.00	Apr. 1, 1998
1300–End	(869–034–00067–3)	12.00	Apr. 1, 1998
22 Parts:			
1–299	(869–034–00068–1)	41.00	Apr. 1, 1998
300–End	(869–034–00069–0)	31.00	Apr. 1, 1998
23	(869–034–00070–3)	25.00	Apr. 1, 1998
24 Parts:			
0–199	(869–034–00071–1)	32.00	Apr. 1, 1998
200–499	(869–034–00072–0)	28.00	Apr. 1, 1998
500–699	(869–034–00073–8)	17.00	Apr. 1, 1998
700–1699	(869–034–00074–6)	45.00	Apr. 1, 1998
1700–End	(869–034–00075–4)	17.00	Apr. 1, 1998
25	(869–034–00076–2)	42.00	Apr. 1, 1998
26 Parts:			
§§ 1.0-1–1.60	(869–034–00077–1)	26.00	Apr. 1, 1998
§§ 1.61–1.169	(869–034–00078–9)	48.00	Apr. 1, 1998
§§ 1.170–1.300	(869–034–00079–7)	31.00	Apr. 1, 1998
§§ 1.301–1.400	(869–034–00080–1)	23.00	Apr. 1, 1998
§§ 1.401–1.440	(869–034–00081–9)	39.00	Apr. 1, 1998
§§ 1.441-1.500	(869-034-00082-7)	29.00	Apr. 1, 1998
§§ 1.501–1.640	(869–034–00083–5)	27.00	Apr. 1, 1998
§§ 1.641–1.850	(869–034–00084–3)	32.00	Apr. 1, 1998
§§ 1.851–1.907	(869–034–00085–1)	36.00	Apr. 1, 1998
§§ 1.908–1.1000	(869–034–00086–0)	35.00	Apr. 1, 1998
§§ 1.1001–1.1400	(869–034–00087–8)	38.00	Apr. 1, 1998
§§ 1.1401–End	(869–034–00088–6)	51.00	Apr. 1, 1998
2–29	(869–034–00089–4)	36.00	Apr. 1, 1998
30–39	(869–034–00090–8)	25.00	Apr. 1, 1998
40–49	(869–034–00091–6)	16.00	Apr. 1, 1998
50–299	(869–034–00092–4)	19.00	Apr. 1, 1998
300–499	(869–034–00093–2)	34.00	Apr. 1, 1998
500–599	(869–034–00094–1)	10.00	Apr. 1, 1998
600–End	(869–034–00095–9)	9.00	Apr. 1, 1998
27 Parts:			
1–199	(869–034–00096–7)	49.00	Apr. 1, 1998

Title	Stock Number	Price	Revision Date
200–End	(869–034–00097–5)	17.00	[6] Apr. 1, 1997
28 Parts:			
0-42	(869–034–00098–3)	36.00	July 1, 1998
43-end	(869-034-00099-1)	30.00	July 1, 1998
29 Parts:			
0–99	(869–034–00100–9)	26.00	July 1, 1998
100–499	(869–034–00101–7)	12.00	July 1, 1998
500–899	(869–034–00102–5)	40.00	July 1, 1998
900–1899	(869–034–00103–3)	20.00	July 1, 1998
1900–1910 (§§ 1900 to 1910.999)	(869–034–00104–1)	44.00	July 1, 1998
1910 (§§ 1910.1000 to end)	(869–032–00105–7)	29.00	July 1, 1997
1911–1925	(869–034–00106–8)	17.00	July 1, 1998
1926	(869–034–00107–6)	30.00	July 1, 1998
1927–End	(869–034–00108–4)	41.00	July 1, 1998
30 Parts:			
1–199	(869–034–00109–2)	33.00	July 1, 1998
200–699	(869–034–00110–6)	29.00	July 1, 1998
700–End	(869–034–00111–4)	33.00	July 1, 1998
31 Parts:			
0–199	(869–034–00112–2)	20.00	July 1, 1998
200–End	(869–032–00113–8)	42.00	July 1, 1997
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–034–00114–9)	47.00	July 1, 1998
191–399	(869–032–00115–4)	51.00	July 1, 1997
400–629	(869–034–00116–5)	33.00	July 1, 1998
630–699	(869–034–00117–3)	22.00	July 1, 1998
700–799	(869–032–00118–9)	28.00	July 1, 1997
800–End	(869–034–00119–0)	27.00	July 1, 1998
33 Parts:			
1–124	(869–032–00120–1)	27.00	July 1, 1997
125–199	(869–034–00121–1)	38.00	July 1, 1998
200–End	(869–034–00122–0)	30.00	July 1, 1998
34 Parts:			
1–299	(869–034–00123–8)	27.00	July 1, 1998
300–399	(869–032–00124–3)	27.00	July 1, 1997
400–End	(869–034–00125–4)	44.00	July 1, 1998
35	(869–032–00126–0)	15.00	July 1, 1997
36 Parts			
1–199	(869–034–00127–1)	20.00	July 1, 1998
200–299	(869–034–00128–9)	21.00	July 1, 1998
300–End	(869–034–00129–7)	35.00	July 1, 1998
37	(869–032–00130–8)	27.00	July 1, 1997
38 Parts:			
0–17	(869–034–00131–9)	34.00	July 1, 1998
18–End	(869–032–00132–4)	38.00	July 1, 1997
39	(869–034–00133–5)	23.00	July 1, 1998
40 Parts:			
1–49	(869–034–00134–3)	31.00	July 1, 1998
50–51	(869–034–00135–1)	24.00	July 1, 1998
52 (52.01–52.1018)	(869–034–00136–0)	28.00	July 1, 1998
52 (52.1019–End)	(869–034–00137–8)	33.00	July 1, 1998
53–59	(869–034–00138–6)	17.00	July 1, 1998
60	(869–032–00139–1)	52.00	July 1, 1997
61–62	(869–034–00140–8)	18.00	July 1, 1998
63	(869–034–00141–6)	57.00	July 1, 1998
64–71	(869–034–00142–4)	11.00	July 1, 1998
72–80	(869–032–00142–1)	35.00	July 1, 1997
81–85	(869–032–00143–0)	32.00	July 1, 1997
86	(869–034–00144–9)	53.00	July 1, 1998
87-135	(869–032–00145–6)	40.00	July 1, 1997
136–149	(869–032–00146–4)	35.00	July 1, 1997
150–189	(869–032–00147–2)	32.00	July 1, 1997
190–259	(869–032–00148–1)	22.00	July 1, 1997
260–265	(869–034–00150–9)	29.00	July 1, 1998
266–299	(869–032–00150–2)	24.00	July 1, 1997
300–399	(869–032–00151–1)	27.00	July 1, 1997
400–424	(869–032–00152–9)	33.00	[5] July 1, 1996
425–699	(869–032–00153–7)	40.00	July 1, 1997
700–789	(869–032–00154–5)	38.00	July 1, 1997
790–End	(869–034–00156–4)	22.00	July 1, 1998
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–034–00157–2)	13.00	July 1, 1998
101	(869–032–00157–0)	36.00	July 1, 1997
102–200	(869–034–00158–9)	15.00	July 1, 1998
201–End	(869–032–00159–6)	15.00	July 1, 1997
42 Parts:			
1–399	(869–032–00160–0)	32.00	Oct. 1, 1997
400–429	(869–032–00161–8)	35.00	Oct. 1, 1997
430–End	(869–032–00162–6)	50.00	Oct. 1, 1997
43 Parts:			
1–999	(869–032–00163–4)	31.00	Oct. 1, 1997
1000–end	(869–032–00164–2)	50.00	Oct. 1, 1997
44	(869–032–00165–1)	31.00	Oct. 1, 1997
45 Parts:			
1–199	(869–032–00166–9)	30.00	Oct. 1, 1997
200–499	(869–032–00167–7)	18.00	Oct. 1, 1997
500–1199	(869–032–00168–5)	29.00	Oct. 1, 1997
1200–End	(869–032–00169–3)	39.00	Oct. 1, 1997
46 Parts:			
1–40	(869–032–00170–7)	26.00	Oct. 1, 1997
41–69	(869–032–00171–5)	22.00	Oct. 1, 1997
70–89	(869–032–00172–3)	11.00	Oct. 1, 1997
90–139	(869–032–00173–1)	27.00	Oct. 1, 1997
140–155	(869–032–00174–0)	15.00	Oct. 1, 1997
156–165	(869–032–00175–8)	20.00	Oct. 1, 1997
166–199	(869–032–00176–6)	26.00	Oct. 1, 1997
200–499	(869–032–00177–4)	21.00	Oct. 1, 1997
500–End	(869–032–00178–2)	17.00	Oct. 1, 1997
47 Parts:			
0–19	(869–032–00179–1)	34.00	Oct. 1, 1997
20–39	(869–032–00180–4)	27.00	Oct. 1, 1997
40–69	(869–032–00181–2)	23.00	Oct. 1, 1997
70–79	(869–032–00182–1)	33.00	Oct. 1, 1997
80–End	(869–032–00183–9)	43.00	Oct. 1, 1997
48 Chapters:			
1 (Parts 1–51)	(869–032–00184–7)	53.00	Oct. 1, 1997
1 (Parts 52–99)	(869–032–00185–5)	29.00	Oct. 1, 1997
2 (Parts 201–299)	(869–032–00186–3)	35.00	Oct. 1, 1997
3–6	(869–032–00187–1)	29.00	Oct. 1, 1997
7–14	(869–032–00188–0)	32.00	Oct. 1, 1997
15–28	(869–032–00189–8)	33.00	Oct. 1, 1997
29–End	(869–032–00190–1)	25.00	Oct. 1, 1997
49 Parts:			
1–99	(869–032–00191–0)	31.00	Oct. 1, 1997
100–185	(869–032–00192–8)	50.00	Oct. 1, 1997
186–199	(869–032–00193–6)	11.00	Oct. 1, 1997
200–399	(869–032–00194–4)	43.00	Oct. 1, 1997
400–999	(869–032–00195–2)	49.00	Oct. 1, 1997
1000–1199	(869–032–00196–1)	19.00	Oct. 1, 1997
1200–End	(869–032–00197–9)	14.00	Oct. 1, 1997
50 Parts:			
1–199	(869–032–00198–7)	41.00	Oct. 1, 1997
200–599	(869–032–00199–5)	22.00	Oct. 1, 1997
600–End	(869–032–00200–2)	29.00	Oct. 1, 1997

Title	Stock Number	Price	Revision Date
CFR Index and Findings Aids	(869–034–00049–6)	46.00	Jan. 1, 1998
Complete 1998 CFR set		951.00	1998
Microfiche CFR Edition:			
Subscription (mailed as issued)		247.00	1998
Individual copies		1.00	1998
Complete set (one-time mailing)		247.00	1997
Complete set (one-time mailing)		264.00	1996

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period July 1, 1996 to June 30, 1997. The volume issued July 1, 1996, should be retained.

[5] No amendments to this volume were promulgated during the period January 1, 1997 through December 31, 1997. The CFR volume issued as of January 1, 1997 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 1997, through April 1, 1998. The CFR volume issued as of April 1, 1997, should be retained.