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federal register

Thursday
November 19, 1998

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Presidential Documents

Title 3—

The President

Presidential Determination No. 99–3 of November 6, 1998

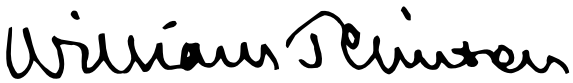
Drawdown Under Section 506(a)(2)(A)(i)(II) of the Foreign Assistance Act of 1961, as Amended To Provide Emergency Disaster Relief Assistance for Honduras, Nicaragua, El Salvador, and Guatemala

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me by section 506(a)(2)(A)(i)(II) of the Foreign Assistance Act of 1961, as amended (''the Act''), 22 U.S.C. 2318(a)(2), I hereby determine that it is in the national interest of the United States to draw down articles and services from the inventory and resources of the Department of Defense, for the purpose of providing international disaster relief assistance to Honduras, Nicaragua, El Salvador, and Guatemala.

Therefore, I direct the drawdown of up to $30 million of articles and services from the inventory and resources of the Department of Defense for the Governments of Honduras, Nicaragua, El Salvador, and Guatemala for the purposes and under the authorities of chapter 9 of part I of the Act.

The Secretary of State is authorized and directed to report this determination to the Congress immediately and to arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,
Washington, November 6, 1998.

[FR Doc. 98–31099
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Rules and Regulations

Federal Register
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 46

[Docket Number FV98–359]

Regulations Under the Perishable Agricultural Commodities Act (PACA); Renewal of License

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is revising the PACA Regulations to provide for a three-year license renewal period for retailers and grocery wholesalers, and provide all other licensees the option of renewing their licenses on an annual, biennial, or triennial basis. The PACA Amendments of 1995 (1995 Amendments) provided for the gradual elimination of license fees for retailers and grocery wholesalers over a three-year period ending November 14, 1998. The 1995 Amendments also gave the Secretary of Agriculture the authority to determine the interval for renewing licenses and asked the Secretary to take due account of savings to the program when determining the appropriate intervals for license renewals.

EFFECTIVE DATE: December 1, 1998.

FOR FURTHER INFORMATION CONTACT: Charles W. Parrott, Assistant Chief, PACA Branch, Room 2095-So. Bldg., Fruit and Vegetable Programs, AMS, USDA, Washington, D.C. 20250, Phone (202) 720–4180, Email__charles__w__parrott@usda.gov.

SUPPLEMENTARY INFORMATION: This proposal is issued under authority of section 15 of the PACA (7 U.S.C. 499o).

Background

The Perishable Agricultural Commodities Act (PACA) establishes a code of fair trading practices covering the marketing of fresh and frozen fruits and vegetables in interstate and foreign commerce. The PACA protects growers, shippers, distributors, and retailers dealing in those commodities by prohibiting unfair and fraudulent practices. In this way, the law fosters an efficient nationwide distribution system for fresh and frozen fruits and vegetables, benefiting the whole marketing chain from farmer to consumer. USDA's Agricultural Marketing Service (AMS) administers and enforces the PACA.

In accordance with the 1995 Amendments to the PACA, retailers and grocery wholesalers will no longer pay a license fee under the PACA after November 14, 1998, but will still be required to maintain a valid license. The 1995 Amendments also authorized the Secretary of Agriculture to determine the interval for renewing licenses for all licensees, taking into account the likely savings to the program. The House of Representatives Committee on Agriculture, in it's report accompanying the 1995 Amendments, asked USDA to examine promptly the necessity for a yearly renewal requirement for retailers and grocery wholesalers in an effort to move toward multi-year licenses.

A proposed rule to amend the regulations was published in the **Federal Register** on July 31, 1998 (63 FR 40842). The proposal provided for the shifting of retailers and grocery wholesalers to a mandatory three-year license renewal period and provided the option of multi-year licensing to all other licensees. Comments on the proposed rule were to be submitted by September 14, 1998. AMS received six comments.

This final rule gradually shifts retailers and grocery wholesalers to a triennial license renewal interval. Each of the remaining 10,000 licensees (commission merchants, brokers, wholesalers, processors, truckers, food service), all of which will continue to pay license fees, have the option of renewing their licenses every one, two, or three years. The option is available to both new license applicants and to existing licensees when they renew their license.

Beginning on the effective date of this rule, all new PACA licenses issued to retailers and grocery wholesalers will be valid for three years. AMS has determined that this rule will become effective on December 1, 1998, in order to give AMS and all licensees sufficient time to prepare for the new renewal procedure. Retailers and grocery wholesalers that are currently licensed will be shifted to a three year license over the next three years. AMS will mail each exisiting retailer or grocery wholesaler licensee a license renewal application at least 30 days prior to its PACA license anniversary date and notify each one of its new anniversary date.

Staggering the new triennial renewal period for retailers and grocery wholesalers over a three-year period will guard against an inundation of renewal applications three years from now which would increase program administrative costs. The phase-in will be implemented as follows: During the first year of the phase-in period, retailers and grocery wholesalers holding current licenses ending in the digits ''0,'' ''3,'' ''6,'' or ''9,'' will renew their licenses on a triennial basis; retailers and grocery wholesalers holding licenses that end in the digits ''1,'' ''4,'' or ''7,'' will renew their licenses this year for a 2-year term, and thereafter on a triennial basis; and retailers and grocery wholesalers holding licenses that end in the digits ''2,'' ''5,'' or ''8,'' will renew their licenses after one year, and thereafter on a triennial basis.

All remaining PACA licensees may choose to renew their licenses annually, biennially, or triennially. Licensees that choose biennial or triennial renewal will ''lock in'' the current license fee rate for a two or three-year period. This rule also provides for a refund of that portion of the license fee to those firms required to obtain a new license due to a change in legal status (*e.g.:* a partnership of two becomes a partnership of three individuals; a sole proprietor incorporates; or a firm re-incorporates), and to those firms that cease business operations or whose license terminates because of bankruptcy. In those instances, USDA will issue refunds only for the full years remaining on the license. To cover the administrative costs associated with processing the early termination of a license, USDA will assess the entity a $100 processing fee.

Comments

We received comments from North American Perishable Agricultural Receivers, Baltimore, Maryland; Western Growers Association, Newport Beach, California; Food Marketing Institute, Washington, D.C.; Food Distributors International (FDI), Falls Church, Virginia; National Grocers Association, Reston, Virginia; and Nardella, Inc., Philadelphia, Pennsylvania. All of the commentors strongly support the Department of Agriculture (USDA) proposal to amend the (PACA) regulations to provide for a three-year license renewal period for retailers and grocery wholesalers, and provide all other licensees the option of renewing their licenses for one, two, or three years.

In its favorable comment, FDI, however, questions the provision in the proposed rule that USDA would assess an entity a $100 processing fee for the early termination of a multi-year PACA license if the licensee was required to obtain a new license because of a change in legal status, ceased business operations, or whose license terminated because of bankruptcy. FDI states that USDA sets forth no rationale why the costs of early termination of a license is more than eight times USDA's $8 cost of renewing a license. In addition, FDI argues that in instances involving bankruptcy, USDA is claiming an asset of a bankrupt, i.e. a portion of the receivable refunded license fee. Such an asset, FDI states, should be returned to the bankrupt estate to ensure payment of claims against the estate—some of which may have arisen under PACA for which trust protection was not preserved.

USDA disagrees with FDI and believes that a $100 processing fee for early termination of a multi-year license is justified in that the refund request must be handled outside of the normal cycle of renewals and terminations. Early termination of a license includes updating agency records to show the reasons for early termination, preparing refund documentation for the National Finance Center along with an audit trail to verify that the refund was made, validating claims, responding to inquiries and disputes, and providing notice to trade publications that circumstances warranted the early termination of a firm's license. Because of the special handling required to refund multi-year license fees when an early termination occurs, USDA believes that the $100 processing fee is justified. USDA believes that the $100 fee is minimal in comparison to the net amount of $450 or $1000 that would be refunded to the licensee holding a biennial or triennial license. In any event, the multi-year license option is not mandatory for all licensees. An applicant or licensee that does not want to risk losing a $100 processing fee because of early termination of its license does have the option of annual renewal. Finally, USDA does not believe that the costs incurred by one licensee because of early license termination should be borne by all licensees. Under the circumstances, USDA is making no change to the final rule based on this comment.

Executive Orders 12866 and 12988

This final rule is issued under the Perishable Agricultural Commodities Act (7 U.S.C. 499 *et seq.*), as amended, and has been determined to be not significant for the purposes of Executive Order 12866.

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

Effects on Small Businesses

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), USDA has considered the economic impact of this final rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $5,000,000. The PACA requires all businesses that operate subject to its provisions maintain a license issued by USDA. There are approximately 15,700 PACA licensees, a majority of which may be classified as small entities.

In accordance with the PACA Amendments of 1995, retailers and grocery wholesalers will no longer pay a fee to be licensed under the PACA after November 14, 1998. The final rule establishes a 3-year renewal cycle for all retailers and grocery wholesalers licensed under the PACA. Given that those PACA licensees will now renew their licenses every three years rather than annually as is currently required, we anticipate that they will have lower administrative costs and a reduction in their record keeping and reporting burden.

In addition, we project that the administrative costs and record keeping requirements for the remaining fee-paying licensees will, like the retailers and grocery wholesalers, be reduced if they choose the biennial or triennial renewal options. We believe that their greatest savings will result from choosing the triennial renewal option, with a lesser degree of savings resulting from the biennial renewal option.

Finally, we believe that that all fee-paying licensees would indirectly benefit from the cost savings realized from these revisions to the PACA program, which is funded through the fees paid by licensees. Any cost savings to the program will help delay the need for an increase in fees to fund the program.

Accordingly, based on the information in the above discussion, USDA has determined that the provisions of this rule would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the information collection and record keeping requirements covered by this final rule were approved by OMB on April 1, 1998, and expire on April 30, 2001.

List of Subjects in 7 CFR Part 46

Agricultural commodities, Brokers, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 46 is amended as follows:

PART 46—[AMENDED]

1. The authority citation for part 46 continues to read as follows:

Authority: Sec. 15, 46 Stat. 537; 7 U.S.C. 499o.

2. In § 46.9, paragraphs, (j), (k), and (l) are added to read as follows:

§ 46.9 Termination, suspension, revocation, cancellation of licenses; notices; renewal.

* * * * *

(j) Beginning on December 1, 1998, the renewal period for new licenses issued to retailers and grocery wholesalers is three years.

(k) Beginning on December 1, 1998, commission merchants, brokers, and dealers (other than grocery wholesalers

and retailers) who are new or existing licensees, may choose to renew their licenses on an annual, biennial, or triennial basis. In the event that the holder of a multi-year license ceases business operations or undergoes a change in legal status that results in the issuance of a new license prior to the next license renewal date, a refund will be issued of any remaining full-year portion of advance fee paid, minus a $100 processing fee.

(l) Retailers and grocery wholesalers who are existing licensees as of December 1, 1998, will be phased into the three-year renewal process during the succeeding one-year as follows:

(1) Licenses held by retailers and grocery wholesalers ending in the digits ''0,'' ''3,'' ''6,'' or ''9,'' will be renewed on a triennial basis.

(2) Licenses held by retailers and grocery wholesalers ending in the digits ''1,'' ''4,'' or ''7,'' will be renewed for two years and thereafter on a triennial basis.

(3) Licenses held by retailers and grocery wholesalers ending in the digits ''2,'' ''5,'' or ''8,'' will renew their licenses after one year, and thereafter on a triennial basis.

Dated: November 13, 1998.

Larry B. Lace,

Acting Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–30906 Filed 11–18–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 93, 94, and 130

[Docket No. 98–070–3]

Closure of Harry S Truman Animal Import Center

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are closing the Harry S Truman Animal Import Center (HSTAIC) and amending the animal import regulations to remove all provisions related to HSTAIC. The facility, which has been used for high risk imports, such as ruminants from countries where foot-and-mouth disease exists, has been chronically under used and has never generated enough revenue to be self-sufficient.

EFFECTIVE DATE: December 21, 1998.

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Chief Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–3276; or e-mail: gary.s.colgrove@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The Harry S Truman Animal Import Center (HSTAIC) is an offshore, maximum biosecurity animal import facility owned and operated by the Animal and Plant Health Inspection Service (APHIS), an agency of the United States Department of Agriculture. It is the only facility of its kind in the United States.

On August 10, 1998, we published in the **Federal Register** (63 FR 42593–42596, Docket No. 98–070–2) a proposal to close HSTAIC and amend the animal import regulations in 9 CFR parts 93 and 94, and the user fee regulations in 9 CFR part 130, to remove all provisions related to HSTAIC.

We solicited comments concerning our proposal for 60 days ending October 9, 1998. We received three comments by that date. One was from an individual; the other two from industry associations.

One comment, from an industry association, was completely supportive of our proposal to close HSTAIC.

The other industry association comment agreed that HSTAIC needs to close, but voiced two concerns.

The first concern was that there will be greater incentive to smuggle llamas and alpacas into Chile from other regions, with the risk that foot-and-mouth disease (FMD) or new diseases would appear in Chile. Chile is currently free of FMD, while other regions in South America are not. Llamas and alpacas from Chile can enter the United States without having to go through quarantine in HSTAIC. Without HSTAIC, llamas and alpacas from regions where FMD exists would not be directly imported into the United States.

We believe this situation is unlikely to lead to more smuggling of animals into FMD- and rinderpest-free regions, such as Chile. Since HSTAIC was dedicated in 1979, only 11 shipments of imported camelids have been quarantined in the facility. Demand for llamas and other camelids in the United States is now shrinking. As demand shrinks, so does the incentive for smuggling animals. Under these circumstances, we believe there is no significant risk.

The commenter's second concern was that any alternative high security import facility maintain high standards for safety and humane care. We agree completely. We are considering alternatives for importing ruminants and swine from regions where FMD or rinderpest exists. No alternative would be acceptable if high standards for safety and humane care were not included.

One comment objected to our proposal to close HSTAIC. The commenter stated: (1) The United States needs to have a facility like HSTAIC, and the facility should not have to be self-sustaining; (2) we should modify HSTAIC just enough to keep it operational, and make major renovations and repairs later; and (3) we underestimated the cost of closing HSTAIC.

As we explained in our proposed rule (see 63 FR 42593), under the statute authorizing HSTAIC, the facility was intended to be self-sustaining. Unfortunately, this has never happened. Demand to use HSTAIC has never been high enough to make it self-supporting. Demand is now falling. Instead of live animals, germplasm—embryos and semen—is now imported for breeding. Under these circumstances, we do not believe HSTAIC is needed. Industry representatives appear to agree; both comments we received from industry associations supported our proposal to close the facility.

We could delay closing HSTAIC, as the commenter suggested. The State of Florida has extended our sewage permit until August, 2003 (this action took place after our proposed rule was published). However, the longer we delay closing the facility, the longer our operating losses will continue, and the more it will cost to close the facility. If the commenter is correct, that we have underestimated the cost to close the facility, then it is even more important that we act quickly to minimize our losses. To do this, we must close HSTAIC as soon as possible.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

HSTAIC is a maximum-security APHIS animal import center that provides quarantine services for animals which would otherwise be excluded because they are being imported directly from countries where high-risk diseases such as foot-and-mouth disease (FMD), rinderpest, African swine fever, hog cholera, and swine vesicular disease are

found. HSTAIC was designed to be a self-supporting facility, to as great a degree as possible, with costs defrayed by charges to the importers of the animals who use the facility. However, this has not been the case. Instead, the facility has been underused and has never generated enough revenue to be self-sufficient.

Vital repairs and maintenance of the facility and its equipment has been accomplished by the use of agency funds that would otherwise have been directed toward pest eradication efforts. However, these costly short term repairs and maintenance have not been adequate to upgrade the facility. Regulations concerning the use of the facility were revised in the early 1990's so that any user of HSTAIC for a single animal importation would be responsible for paying all related costs, except capital expenses, incurred in qualifying and quarantining the imported animals at HSTAIC, but the deficit has persisted. At inception, a strong demand was projected for breeding stock in order to import strains of livestock that had specific traits needed for improving U.S. domestic breeds, particularly cattle from high disease-risk countries. However, after the first six imports, this had not occurred. The facility has not had the optimal three imports in any year and money for capital expenditures has not been appropriated. Therefore, we are closing the facility and removing from the CFR the current regulations concerning HSTAIC. Under the terms of this rule, the Center will not accept animals for quarantine after December 31, 1998, and APHIS will enter into an agreement with a prospective importer for final exclusive use of the facility only if it is certain that the animals will enter the Center on or before that date.

Since HSTAIC was dedicated in 1979 there have been 21 ruminant and swine importations. The first imports (cattle from Brazil) were released in July 1980. A total of 6,713 animals have been quarantined and released during this period, including cattle (633), swine (574), sheep and goats (460) and camelids (5,046). Several countries in Latin America (Bolivia, Brazil, Chile and Peru), Europe (France, Germany), Asia (China), and Africa (South Africa) were the sources of the imports. Of these, Chile, France and Germany are now recognized as FMD free. Certain regions in South Africa are also in the process of being recognized as free. The first six imports were cattle (3 from Brazil and 3 from Europe). Camelids have accounted for 11 imports (5 from Bolivia, 1 from Chile/Brazil and 5 from Peru). There have been three imports of swine (1 from China, 1 from France and 1 from Germany), and one import of sheep and goats (from South Africa). Eight out of the nine most recent imports have been camelids.

The above total, 21 imports in nearly 20 years, has fallen short of the anticipated three shipments of animals per year. Based on three months of isolation at the center for each group and one month between shipments for cleaning and disinfecting, with full use, there should have been 57 imports handled through HSTAIC. Furthermore, the size of individual imports has been smaller than the capacity of the facility, and thus importers have failed to take advantage of economies of scale, which would have reduced the per animal cost of using the facility, as costs per animal are lower as numbers increase. The capacity of the facility is about 400, plus sentinel animals. (This designation is for cattle. For smaller animals, such as sheep and goats, even larger numbers can be accommodated). Only 6,713 animals were actually imported and quarantined during the entire 21 years. The potential number should have been more than 22,800 animals.

The quarantine process is costly regardless of numbers, and is paid entirely by the importers. The average fee for the last 10 imports has been $1,920 (or $16 per day) per head. Each selected applicant has exclusive rights to use HSTAIC for the importation during the quarantine period and is responsible for paying all costs, excluding capital expenditure, incurred in qualifying and quarantining the specified animals through HSTAIC. A partial list of costs includes: expense for sentinel animals, laboratory tests, medical treatment, official travel by APHIS personnel, courier services to transport test samples to the Foreign Agricultural Disease Diagnostic Laboratory (FADDL), salaries of HSTAIC personnel, all supplies needed for animal care, maintenance, and testing and the post-quarantining cleaning and disinfection of HSTAIC, as well as utilities and overhead, including salaries and benefits of support staff. The operational cost of an average importation is high—between $750,000 and $1 million per import period. This cost would likely have increased, if the center remained open, since substantial infrastructure repairs are needed immediately and there is an ever-increasing requirement to maintain the aging facility. Expenses charged to selected importers vary by importation depending on the kind and number of animals in each shipment, and the country of origin.

Since operating costs while the facility is in use are charged entirely to the importers, if HSTAIC were fully utilized (that is, housing three importations during each year), it could probably be nearly self-supporting. However, due to underutilization, the minimum operating budget must cover costs borne by the facility in the absence of animal shipments. The facility has never had three imports in a single year since its opening. In fact, no quarantines at all occurred for two years (1986 and 1990), two imports each for only three years (1993, 1996 and 1998), and the remaining years have had only one import each year. Thus, up to two-thirds of operational costs have had to be covered from agency funds. During a non-used year, approximately $390,000 had to be allocated, from the agency budget, just to maintain the facility. In a partial-use year the deficits ranged between $130,000 and $260,000. Over the duration of the facility, the agency has diverted approximately $4 million in nominal dollars, or about $6.4 million in 1998 dollars, for operational expenditures to keep the facility ready for very few users.

These deficit amounts do not reflect the depreciation of the component parts of the facility and of replacement needs. While the property presently has no other purpose except maintaining readiness for the small number of importers of special livestock from countries that are not free from FMD, equipment, supplies and the physical plant still lose their value, whether with disuse or use, as they wear out or become obsolete. Furthermore, as the facility has aged, maintaining the building in useable condition has required more frequent upgrading of its components, which have varying degrees of life expectancy. The annual adjusted depreciation value of the various physical components of the facility is approximately $93,776 (obtained by straight line depreciation of all replaceable assets and equipment whose useful life is still active) or about $257/day. This is the cost of depreciation the facility has been incurring annually even with full use, the amount that should have been collected for the purpose of upgrading equipment. By initially excluding capital expenditures from the fee structure, the agency forfeited the opportunity to charge users approximately $1.8 million in nominal dollars (or about $2.4 million in 1998 dollars) that it could have been collecting over the entire period. Overall, the operational deficits and the capital expenditures have accounted for

about $8.8 million. If the facility were kept open, the agency would continue to incur similar losses, with only slight relief if these costs were prorated and added to user fees.

The agency has already spent over $1 million in the last five years to repair and modify an incinerator, test emissions, and replace stack pipes, in an effort to meet standards set by the U.S. Environmental Protection Agency (EPA) and the Florida Department of Environmental Protection (FDEP). Attempting to keep this aging facility in compliance with EPA/FDEP standards would continue to be expensive for the agency. (These needed repairs include repairing and upgrading the facility's wastewater treatment facility; replacing a generator, an incinerator, the roof, and underground fuel storage tanks; and upgrading the fire suppression/alarm and heating, ventilation, and air conditioning systems.) Currently about $4.5 million are needed to make the most urgently needed repairs. Closing the facility will make this unnecessary. The money and human resources needed to keep this facility operating can be diverted to other programs that play a more important role in protecting the United States against animal disease incursions. The cost of closing the facility, about $1 million, will be offset by the future saving the agency will realize.

Closure of the facility will not impact a substantial number of importers, because most importers do not use HSTAIC. Despite the original expectation that cattle and swine would be the predominant imports, over the last six years the facility has been used mainly by importers of llamas and alpacas. Using public funds in the maintenance of a facility that serves only specific importers places an undo burden on tax payers. This action is not expected to have a negative economic impact on this small number of entities, which can still import camelids into the United States from Chile and other countries, which are recognized as FMD free. The facility closure should produce positive budgetary impact for the agency.

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

Executive Order 12988

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

Paperwork Reduction Act

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

Lists of Subjects

9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

9 CFR Part 130

Animals, Birds, Diagnostic reagents, Exports, Imports, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Tests.

Accordingly, we are amending 9 CFR parts 93, 94 and 130 as follows:

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

1. The authority citation for part 93 is revised to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

§§ 93.430 and 93.431 [Removed and reserved]

2. In part 93, §§ 93.430 and 93.431 are removed and reserved.

§§ 93.522 and 93.523 [Removed]

3. In part 93, §§ 93.522 and 93.523 are removed.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS.

4. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 135a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.2(d).

§ 94.1 [Amended]

5. In § 94.1, paragraph (b)(2) is removed and paragraphs (b)(3) and (b)(4) are redesignated as paragraphs (b)(2) and(b)(3), respectively.

PART 130—USER FEES

6. The authority citation for part 130 is revised to read as follows:

Authority: 5 U.S.C. 5542; 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114, 114a, 134a, 134c, 134d, 134f, 136, and 136a, 7 CFR 2.22, 2.80, and 371.2(d).

§ 130.1 [Amended]

7. In § 130.1, the definition of *Animal Import Center is* amended by removing the last sentence.

Done in Washington, DC, this 12th day of November 1998.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–30973 Filed 11–18–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–29–AD; Amendment 39–10899; AD 98–24–13]

RIN 2120–AA64

Airworthiness Directives; Eurocopter Deutschland GmbH (ECD) (Eurocopter) Model MBB–BK117 A–1, A–3, A–4, B–1, B–2, and C–1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Eurocopter Model MBB–BK117 A–1, A–3, A–4, B–1, B–2, and C–1 helicopters, that currently requires initial and repetitive inspections of both surfaces of the tail boom vertical fin (vertical fin) spar, the skin, and the left-hand and right-hand frame sheets for cracks or loose rivets. That AD also requires repairing certain cracks, if found, and repairing and reporting those loose rivets and certain other cracks, if found. This amendment requires the same inspections, repairs, and reporting as the existing AD, but changes the reference to the service bulletin and

prohibits the use of blind rivets for the vertical fin spar repair. This amendment is prompted by an accident that occurred on April 15, 1997, resulting in one fatality. The actions specified by this AD are intended to prevent failure of the vertical fin and subsequent loss of control of the helicopter.

DATES: Effective December 4, 1998.

The incorporation by reference of Eurocopter Alert Service Bulletin MBB–BK 117–30–106, Revision 4, dated December 19, 1997, as listed in the regulations, is approved by the Director of the Federal Register as of December 4, 1998.

The incorporation by reference of Eurocopter Alert Service Bulletin No. MBB–BK 117–30–106, Revision 3, dated May 5, 1997, as listed in the regulations, was approved previously by the Director of the Federal Register as of October 24, 1997 (62 FR 52655, October 9, 1997).

Comments for inclusion in the Rules Docket must be received on or before January 19, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–29–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Monschke, Aerospace Engineer, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5116, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: On April 25, 1997, the FAA issued priority letter AD 97–09–16, to require inspecting both surfaces of the vertical fin spar, part number (P/N) 105–304061.03, P/N 1120–30406.03, or P/N 117–30423–03, paying particular attention to the area extending from the top edge of the second lightening hole from the top of the vertical fin spar to the bottom edge of the fourth lightening hole, the outer skin (skin), and the left-hand and right-hand frame plates for cracks, loose rivets, or other anomalies. That priority letter AD required that the inspection be performed before further flight, then repeated at intervals not to exceed 100 hours time-in-service (TIS). That action was prompted by an accident involving a Eurocopter Model MBB–BK117 series helicopter that occurred on April 15, 1997, resulting in one fatality. A subsequent investigation revealed that the vertical fin had failed as a result of a fatigue crack that initiated on the left side of the vertical fin. The crack propagated across the spar cap and spar. A crack in the skin propagated horizontally toward the vertical fin leading edge until catastrophic overstress occurred. Inspections of other helicopters of the same type design revealed cracks in the vertical fin spars of three additional helicopters. That condition, if not corrected, could result in failure of the vertical fin and subsequent loss of control of the helicopter.

On September 26, 1997 the FAA issued AD 97–20–16, Amendment 39–10153 (62 FR 52655, October 9, 1997), superseding priority letter AD 97–09–16 to require the same initial and repetitive inspections of the vertical fin spar, and additionally, requiring the repair of certain cracks, if found, and reporting and repairing loose rivets and certain other cracks. That action was prompted by the issuance of Eurocopter Alert Service Bulletin (ASB) No. MBB–BK 117–30–106, Revision 3, dated May 5, 1997, which contains repair procedures for the cracks that were unavailable at the time of the release of priority letter AD 97–09–16. The requirements of both those ADs are intended to prevent failure of the vertical fin spar and subsequent loss of control of the helicopter.

Since the issuance of AD 97–20–16, Eurocopter has issued Eurocopter ASB MBB–BK117 No. ASB–MBB–BK 117–30–106, Revision 4, dated December 19, 1997, which replaces all previous revisions and specifies repair procedures for the spar cap as well as inspection requirements. It also deletes a reference that allows the use of blind rivets for the vertical fin spar repair.

These helicopter models are manufactured in The Federal Republic of Germany and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the Luftahrt-Bundesamt (LBA), the airworthiness authority for The Federal Republic of Germany, has kept the FAA informed of the situation described above. The LBA superseded AD No. 97–144/2, dated June 5, 1997, with AD 1997–144/3, effective May 11, 1998. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter Model MBB–BK117 A–1, A–3, A–4, B–1, B–2, and C–1 helicopters of the same type design, this AD supersedes AD 97–20–16, Amendment 39–10153 (62 FR 52655, October 9, 1997) to require inspecting both surfaces of the vertical fin spar, P/N 105–304061.03, P/N 1120–30406.03, or P/N 117–30423–03, paying particular attention to the area extending from the top edge of the third lightening hole from the top of the vertical fin spar to halfway between the fourth and fifth lightening hole (see Figure 1 for description of area to be inspected), the skin, and the left-hand and right-hand frame sheets for cracks or loose rivets. This inspection must be repeated at intervals not to exceed 100 hours TIS until the repair is accomplished. If a crack is found in the area of the fourth lightening hole of the vertical fin spar, including a crack in the cap or ''c'' channel area of the spar, or in the left-hand frame sheet, P/N 105–304161 or P/N 1120–30416, or in the right-hand frame sheet, P/N 105–304211 or P/N 1120–30421, before further flight, the crack must be repaired in accordance with the repair instructions that are an Appendix titled ''Repair of BK117 Vertical Fin'' to Eurocopter ASB MBB–BK 117 No. ASB–MBB–BK 117–30–106, Revision 4, dated December 19, 1997, or in accordance with Eurocopter ASB No. MBB–BK 117–30–106, Revision 3, dated May 5, 1997, except use of blind rivets is not permitted. Thereafter, this AD requires that a visual inspection for cracks be performed at intervals not to exceed 300 hours TIS. If a crack or loose rivet is found in the area other than that described in paragraph (a) of this AD, including any crack that is found to extend into the skin, P/N 105–304011.18 or P/N 1120–30402.0, contact the Rotorcraft Standards Staff before further flight for further evaluation. If no crack is found, the repetitive visual inspection for cracks is required at intervals not to exceed 100 hours TIS until the repair specified in the repair instruction is accomplished. The repair must be accomplished within 600 hours TIS after October 24, 1997. Thereafter, the repetitive visual inspections for cracks are required at intervals not to exceed 300 hours TIS. The actions are required to be accomplished in accordance with the service bulletins described. The

short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity of the helicopter. Therefore, inspections, reporting, and repairs, if necessary, are required prior to further flight, and this AD must be issued immediately.

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.

The FAA estimates that 132 helicopters will be affected by this AD, that it will take approximately 4 work hours for each inspection and 35 hours for each repair, if necessary, per helicopter, and that the average labor rate is $60 per work hour. Required parts will cost approximately $302 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $348,744, assuming one inspection and one repair per helicopter.

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 rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–SW–29–AD.'' 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 that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–10153 (62 FR 52655, October 9, 1997), and by adding a new airworthiness directive (AD), Amendment 39–10899, to read as follows:

AD 98–24–13 Eurocopter Deutschland GmbH (ECD): Amendment 39–10899. Docket No. 98-SW–29–AD. Supersedes AD 97–20–16, Amendment 39–10153, Docket No. 97–SW–15–AD.

Applicability: Model MBB–BK117 A–1, A–3, A–4, B–1, B–2, and C–1 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter 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 helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (f) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the tail boom vertical fin (vertical fin) and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, remove the tail rotor drive shaft between the intermediate and tail rotor gearboxes and the yaw servo (if installed). Thoroughly clean the vertical fin spar and adjacent areas and visually inspect the following for cracks or loose rivets:

(1) Both surfaces of the vertical fin spar, part number (P/N) 105–304061.03, P/N 1120–30406.03, or P/N 117–30423–03, paying particular attention to the area extending from the top edge of the third lightening hole from the top of the vertical fin spar to halfway between the fourth and fifth lightening hole (see Figure 1).

(2) The skin and left-hand and right-hand frame sheets.

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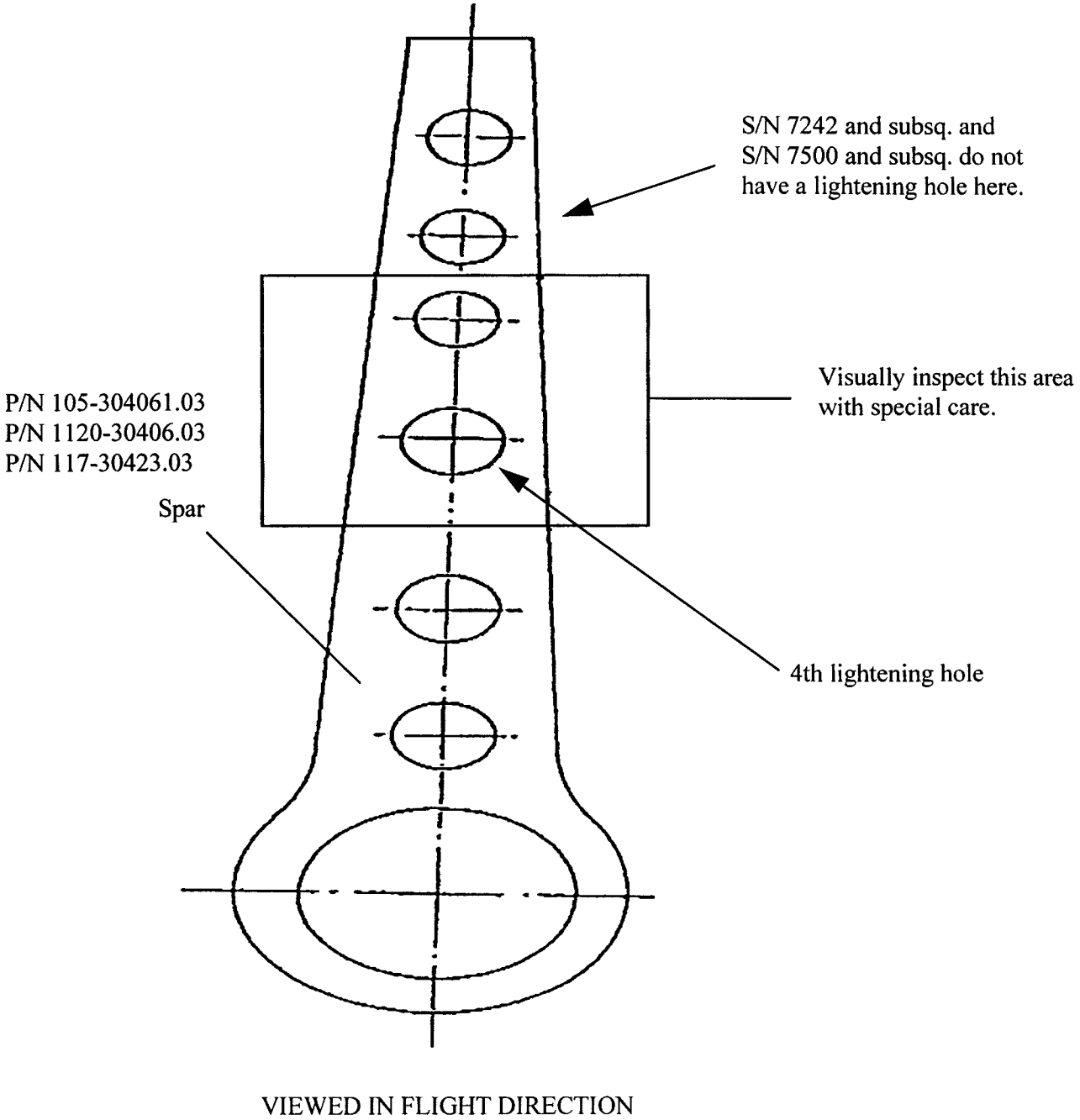

Figure 1

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(b) If a crack or loose rivet is found in the area described in paragraph (a) of this AD (see Figure 1), before further flight, repair in accordance with the Appendix, ''Repair of BK117 Vertical Fin'', to Eurocopter Alert Service Bulletin (ASB) MBB–BK 117 No. ASB–MBB–BK 117–30–106, Revision 4, dated December 19, 1997, or in accordance with Eurocopter ASB No. MBB–BK 117–30–106, Revision 3, dated May 5, 1997, except use of blind rivets is not permitted. Thereafter, perform the inspection described in paragraph (a) of this AD at intervals not to exceed 300 hours TIS.

(c) If a crack or loose rivet is found in the area other than that described in paragraph (a) of this AD, including any crack that is found to extend into the skin, P/N 105–304011.18 or P/N 1120–30402.08, before further flight, contact the Rotorcraft Standards Staff. Reporting requirements have been approved by the Office of Management and Budget and assigned OMB control number 2120–0056.

(d) If no crack or loose rivet is found as a result of the inspection required by paragraph (a) of this AD, until the repair is made in accordance with the Appendix, ''Repair of BK117 Vertical Fin,'' to Eurocopter ASB MBB–BK 117 No. ASB–MBB–BK 117–30–106, Revision 4, dated December 19, 1997, or in accordance with the Appendix, ''Repair of BK117 Vertical Fin,'' to Eurocopter ASB No. MBB–BK 117–30–106, Revision 3, dated May 5, 1997, except use of blind rivets is not permitted, perform the visual inspection required by paragraph (a) of

this AD at intervals not to exceed 100 hours TIS.

(e) Within 600 hours TIS after October 24, 1997, accomplish the repair to the vertical fin in accordance with the Appendix, ''Repair of BK117 Vertical Fin,'' to Eurocopter ASB MBB–BK–117 No. ASB–MBB–BK 117–30–106, Revision 4, dated December 19, 1997, or in accordance with the Appendix, ''Repair of BK117 Vertical Fin,'' to Eurocopter ASB No. MBB–BK 117–30–106, Revision 3, dated May 5, 1997, except use of blind rivets is not permitted. If blind rivets were previously used to accomplish the vertical fin repair, they must be removed and replaced with solid rivets to comply with the requirements of this AD. Thereafter, perform the visual inspection required by paragraph (a) of this AD at intervals not to exceed 300 hours TIS.

(f) 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, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

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

(g) Special flight permits will not be issued.

(h) The inspections and repairs shall be done in accordance with the Appendix, ''Repair of BK117 Vertical Fin,'' to Eurocopter Alert Service Bulletin MBB–BK 117–30–106, Revision 4, dated December 19, 1997, or in accordance with the Appendix, ''Repair of BK117 Vertical Fin,'' to Eurocopter Alert Service Bulletin No. MBB–BK 117–30–106, Revision 3, dated May 5, 1997, except use of blind rivets is not permitted. The incorporation by reference of Eurocopter Alert Service Bulletin No. MBB–BK 117–30–106, Revision 3, dated May 5, 1997, was approved previously by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of October 24, 1997 (62 FR 52655, October 9, 1997). The incorporation by reference of Eurocopter Alert Service Bulletin MBB–BK 117–30–106, Revision 4, dated December 19, 1997, was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: Accomplishment of the requirements of Revision 3 of the referenced service bulletin, except for using solid rivets instead of blind rivets, or Revision 4 of the referenced service bulletin constitutes compliance with the requirements of this AD.

(i) This amendment becomes effective on December 4, 1998.

Note 4: The subject of this AD is addressed in Luftahrt-Bundesamt (Germany) AD 1997–144/3, effective May 11, 1998.

Issued in Fort Worth, Texas, on November 12, 1998.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–30788 Filed 11–18–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–39]

Amendment to Class E Airspace; Great Bend, KS

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Great Bend, KS.

DATE: The direct final rule published at 63 FR 51812 is effective on 0901 UTC, January 28, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on September 29, 1998 (63 FR 51812). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on January 28, 1999. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on October 27, 1998.

Herman J. Lyons, Jr.

Manager, Air Traffic Division, Central Region.

[FR Doc. 98–30931 Filed 11–18–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–40]

Amendment to Class E Airspace; Pittsburgh, KS

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Pittsburgh, KS.

DATE: The direct final rule published at 63 FR 51811 is effective on 0901 UTC, January 28, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on September 29, 1998 (63 FR 51811). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on January 28, 1999. No adverse comments were received, and thus this notice conforms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on October 27, 1998.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 98–30930 Filed 11–18–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–41]

Amendment to Class E Airspace; Ulysses, KS

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Ulysses, KS.

DATE: The direct final rule published at 63 FR 51809 is effective on 0901 UTC, January 28, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct rule with a request for comments in the **Federal Register** on September 29, 1998 (63 FR 51809). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on January 28, 1999. No adverse comments were received, and thus this notice that this direct final rule will become effective on that date.

Issued in Kansas City, MO on October 27, 1998.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 98–30929 Filed 11–18–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–45]

Amendment to Class E Airspace; Burlington, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Coffey County Airport, Burlington, KS. The FAA has developed Global Positioning System (GPS) Runway (RWY) 18 and RWY 36 Standard Instrument Approach Procedures (SIAPs) to serve Coffey County Airport, KS. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate these SIAPs and for Instrument Flight Rules (IFR) operations at this airport. The enlarged area will contain the new GPS RWY 18 and GPS RWY 36 SIAPs in controlled airspace. The intended effect of this rule is to provide controlled Class E airspace for aircraft executing the GPS RWY 18 and GPS RWY 36 SIAPs and to segragate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: This direct final rule is effective on 0901 UTC, March 25, 1999.

Comments for inclusion in the Rules Docket must be received on or before January 11, 1999.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 98–ACE–45, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has developed GPS RWY 18 and GPS RWY 36 SIAPs to serve the Coffey County Airport, Burlington, KS. The amendment to Class E airspace at Burlington, KS, will provide additional controlled airspace at and above 700 feet AGL in order to contain the new SIAPs within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register,** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, 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 or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related 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 action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–ACE–45.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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 noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (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.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE KS E5 Burlington, KS [Revised]

Coffey County Airport, KS
(Lat. 38°18′09″N., long. 95°43′30″W.)
Boyd NDB
(Lat. 38°17′59″N., long. 95°43′18″W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Coffey County Airport and within 2.5 miles each side of the 182° bearing from the Boyd NDB extending from the 6.5-mile radius to 9 miles south of the airport, and within 4 miles each side of the 360° bearing from the airport extending from the 6.5-mile radius to 8.6 miles north of the airport.

* * * * *

Issued in Kansas City, MO, on October 29, 1998.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 98–30928 Filed 11–18–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–47]

Amendment to Class E Airspace; Grinnell, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Grinnell Regional Airport, Grinnell, IA. The FAA has developed Global Positioning System (GPS) Runway (RWY) 13 and GPS RWY 31 Standard Instrument Approach Procedures (SIAPs) to serve Grinnell Regional Airport, IA. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate these SIAPs and for Instrumental Flight Rules (IFR) operations at this airport. The enlarged area will contain the new GPS RWY 13 and GPS RWY 31 SIAPs in controlled airspace. The intended effect of this rule is to provide controlled Class E airspace for aircraft executing GPS RWY 13 and GPS RWY 31 SIAPs, and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: This direct final rule is effective on 0901 UTC, March 25, 1999.

Comments for inclusion in the Rules Docket must be received on or before December 26, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 98–ACE–47, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has developed GPS RWY 13 and GPS RWY 31 SIAPs to serve the Grinnell Regional Airport, Grinnell, IA. The amendment to Class E airspace at Grinnell, IA, will provide additional controlled airpsace at and above 700 feet AGL in order to contain the new SIAPs within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the

date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, 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 or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related 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 action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–ACE–47.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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 noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (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.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Grinnell, IA [Revised]

Grinnell Regional Airport, IA

(Lat. 41°42′33″N., long. 92°44′06″W.)

Grinnell NDB

(Lat. 41°42′35″N., long. 92°43′47″W.)

That airspace extending upward from 700 feet above the surface within a 7.6-mile radius of Grinnell Regional Airport.

* * * * *

Issued in Kansas City, MO, on October 28, 1998.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 98–30927 Filed 11–1–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 600

[Docket No. 970728182–8272–02; I.D. 071697A]

RIN 0648–AG16

Magnuson-Stevens Act Provisions; Financial Disclosure

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to revise the rules of conduct and financial disclosure regulations applicable to Regional Fishery Management Council (Council) nominees, appointees, and voting members. The revisions would implement a provision of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) that was amended by the Sustainable Fisheries Act (SFA) in 1996. The new provision prohibits Council members from voting on matters that would have a significant and predictable effect on a financial interest disclosed in accordance with existing regulations.

DATES: Effective February 17, 1999.

ADDRESSES: Comments regarding burden-hour estimates for the collection-of-information requirements contained in this final rule should be sent to George H. Darcy, F/SF3, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910; and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Margaret Frailey Hayes, Assistant General Counsel for Fisheries, NOAA Office of General Counsel, 301–713–2231.

SUPPLEMENTARY INFORMATION:

Background

On October 11, 1996, the President signed into law the SFA, which made numerous amendments to the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*). Among those amendments was a provision that prohibits Council members from voting on matters that would have a significant and predictable effect on a financial interest disclosed in accordance with existing regulations. On August 7, 1997, NMFS published a proposed rule at 62 FR 42474 to implement the financial disclosure provisions of the SFA; comments were requested through September 8, 1997. Additional background information was included in the preamble of that proposed rule, and is not repeated here.

Comments on the August 7, 1997, Proposed Rule and Responses

1. *Comment.* The Office of Government Ethics (OGE) questioned NMFS' legal authority for issuing the rule of conduct proposed for § 600.225(b)(8).

Response. NMFS has authority under the Magnuson-Stevens Act to prescribe uniform standards for the Councils' practices and procedures (section 302(f)(6)) and to promulgate rules to carry out the provisions of the Act (section 305(d)). The rule of conduct is really a paraphrase of 18 U.S.C. 208; § 600.225(b)(8)(i) has been revised to match the statutory language more closely. Section 600.225(b)(8)(ii) continues the disqualification of all Council members from participating in matters ''primarily of individual concern.''

2. *Comment.* OGE stated that conduct rules for Council members should be issued as supplemental regulations to the standards of conduct to which all Federal employees are subject.

Response. That suggestion is inconsistent with an opinion of the Office of Legal Counsel, Department of Justice, dated December 9, 1993, which held that Council members are not Federal employees subject to the Executive Order on ethics or to the Government-wide standards of conduct. (Note, however, that Council members are considered special Government employees for purposes of the Federal conflict-of-interest statute, 18 U.S.C. 208.)

3. *Comment.* OGE found the proposed rule unclear as to who must file a financial disclosure report, i.e., whether all members and nominees must file, or only those with interests in harvesting, processing, or marketing activities. It also found the proposed rule overly broad in requiring affected individuals to disclose interests in an industry related to harvesting, processing, or marketing activities.

Response. NMFS has long interpreted section 302(j)(2) to require affected individuals to disclose financial interests in activities *related* to harvesting, processing, or marketing. If NMFS had read the financial-disclosure provision as narrowly as OGE suggests, many Council members such as fisheries association officers would have been subject to criminal liability under 18 U.S.C. 208. They would have been unable even to participate in Council deliberations on issues affecting their employment or other fiduciary interests. NMFS believes that Congress intended in the 1986 amendments to the Magnuson Act to allow persons with financial interests in activities related to harvesting, processing, or marketing to continue serving on Councils on the same footing as persons with more direct interests. The ''price'' of this participation was the disclosure of those interests, so that the public could be informed of possible biases by members affiliated with certain sectors of the fishing industry. In the 1996 amendments to the Magnuson-Stevens Act, Congress indicated no dissatisfaction with the agency's practice of requiring disclosure of financial interests in related activities, and did not amend section 302(j)(2).

4. *Comment.* Another commenter pointed out a perceived inconsistency in the proposed rule between the broad scope of the requirement for disclosing financial interests, and the narrow scope of financial interests that would disqualify a member from voting. The commenter would prefer that the disqualifying financial interests be broadened to match the disclosed interests, so that representatives of fishing industry groups would be subject to the recusal provisions of the SFA.

Response. The legislative history of the 1996 amendments to the Magnuson-Stevens Act indicates that Congress was concerned about members whose votes on Council actions might result in direct gain or loss to themselves or their companies. The SFA disqualifies members from voting on decisions that would have a ''significant and predictable effect'' on their financial interests. That phrase was defined as ''a close causal link between the Council decision and an expected and substantially disproportionate benefit to the financial interest of the affected individual relative to the financial interests of other participants in the same gear type or sector of the fishery.'' In developing the proposed rule, and again in considering the final rule, NMFS focused on the comparative aspect of the defined term. The disqualifying effect is not that the Council action will have a significant impact on the member's financial interest; the action must have a disproportionate impact as compared with that of other participants in the fishery sector. Therefore, the criteria for recusal are limited to persons whose financial interests are directly linked to harvesting, processing, or marketing activities.

5. *Comment.* OGE suggested that NMFS require all affected individuals to file a confidential disclosure of all their financial interests, in addition to the financial disclosure report required by the Magnuson-Stevens Act to be filed by affected individuals who have financial interests in harvesting, processing, or marketing activities.

Response. As noted above, Council members are not Federal employees for purposes of the OGE regulations. There is no explicit authority in the Magnuson-Stevens Act for requiring confidential financial disclosure, but NMFS expects that affected individuals with financial interests that are not required to be disclosed would seek advice from Departmental counsel regarding their participation in matters before their Councils.

6. *Comment.* OGE stated that members' financial disclosure forms should be available for inspection at Council meetings.

Response. NMFS agrees. This requirement appears in the current rule, and in the final rule at § 600.235(b)(3).

7. *Comment.* OGE found the criterion of a 10-percent share of an industry to be huge, eviscerating any potential restriction on industry participants. Besides lowering the percentage, OGE suggested a standard that would incorporate a dollar amount for the gross value of the individual's landings of fish.

On the other hand, the Western Pacific Fishery Management Council said that 10 percent is too low for small fisheries. The Council proposed a tiered approach for the Western Pacific, with a standard of 50 percent for fisheries smaller than 50 vessels; 25 percent for fisheries between 51 and 100 vessels; 15 percent for fisheries between 101 and 200 vessels; and 10 percent for fisheries larger than 200.

Response. NMFS does not believe a monetary standard, whether value of landings, value of fish processed, or value of fish marketed, is workable. OGE objected to the NMFS proposal but provided no alternative proportion, nor

did it provide any quantitative data or qualitative information to support its position.

While NMFS has no quantitative data on which to base the selection of 10 percent as the disqualifying industry share, qualitative information available from existing disclosure forms and other sources indicates that this value would accomplish the Congressional intent of disqualifying from voting only those current Council members whose financial interests would be disproportionately affected by Council actions, in comparison with the financial interests of other participants in the fishery sector.

NMFS does not agree with the suggested tiered approach for the Western Pacific, because a Council member owning nearly half the vessels in a small fishery would be able to vote on a matter that could disproportionately benefit his or her financial interest. NMFS received no other suggestions for a tiered approach, although the proposed rule specifically invited comments on this issue.

8. *Comment.* OGE questioned the need for a provision for voluntary recusal, at § 600.235(d), and its limitation to only those financial interests that have been disclosed.

Response. Any Council member may decline to vote on a matter before the Council for any reason. NMFS included a provision to remind members of this.

9. *Comment.* OGE was troubled by the statutory allowance of participation in deliberations by members who are recused, because active participation may have as much effect on the outcome as a vote. OGE recommended that § 600.235(e) be amended to clarify that only those who are recused under section 302(j) of the Magnuson-Stevens Act are allowed to participate, while members with other types of financial interests may be precluded from participating under 18 U.S.C. 208.

Response. This provision has been revised in accordance with OGE's recommendation with respect to particular matters of individual concern.

10. *Comment.* Concerning § 600.235(f)(4), OGE asked what would happen to a Council decision if the designated official determined that a Council member could vote, another Council member requested a review of that determination, and the NOAA General Counsel found that the member should not have voted.

Response. The provision has been clarified, at § 600.235(f)(5), to indicate, in accordance with section 302(j)(7)(E) of the Magnuson-Stevens Act, that the eventual ruling by the NOAA General Counsel will not disturb the Council decision.

11. *Comment.* The Western Pacific Fishery Management Council asked why a Council member should have the opportunity to request a review of a determination, if there will be no effect on the Council decision.

Response. Section 302(j)(7) of the Magnuson-Stevens Act provides for the request for a review, but states that the eventual ruling is not cause for invalidation or reconsideration of the Council's decision by the Secretary. The Council itself might decide to vote on the issue again at a later meeting, if review of the determination reversed the initial ruling. The General Counsel's ruling would also have precedential value for subsequent determinations.

12. *Comment.* OGE asked whether one Council member can question another member's action, if the designated official has not made a determination.

Response. There is legislative history indicating that only the member whose action is in question may request a determination by the designated official. Another member, however, is free to bring the issue to the attention of the designated official, who would then consider making a determination on his/her own initiative under § 600.235(f)(2).

Changes From the August 7, 1997, Proposed Rule

Section 600.225(b)(8)(i) has been revised to track more closely the provisions of 18 U.S.C. 208. Unless exempted, a Council member may not participate personally and substantially in a particular matter in which the individual, family members, or business associates have a financial interest. This rule of conduct does not apply to financial interests required to be disclosed under § 600.235(b), nor to members who are exempt under 18 U.S.C. 208(b) (1) or (2). Section 600.225(b)(8)(ii) continues the disqualification of all Council members from participating in matters ''primarily of individual concern.''

A definition of ''Council decision'' has been added to clarify that the recusal requirements do not apply to actions by Council committees. A committee vote is not binding on the Council and thus cannot have a ''significant and predictable effect'' on a member's financial interest. Under § 600.235(e), however, an affected individual who will be recused from voting on a Council decision must notify the Council of the recusal before participating in committee deliberations.

A definition of ''financial interest in harvesting, processing, or marketing'' has been added at § 600.235(a), to apply only to the disclosure and recusal provisions. The phrase ''ownership interests'' includes leases of fishing vessels and individual fishing quotas.

Section 600.235(b)(1) has been revised to use the term ''financial interest in harvesting, processing, or marketing,'' which allows removal of some text that is now covered in the definition.

A sentence in the current regulations, which was inadvertently omitted from the proposed rule, has been added to § 600.235(b)(3) to require that financial interest forms be made available at Council meetings and hearings.

Two sentences have been added at the end of § 600.235(c)(2) to specify that financial interests of affected individuals and other participants will be judged based on the most recent fishing year for which information is available. For IFQ fisheries, however, the judgment will be based on the percentage of IFQs assigned to the affected individual.

Section 600.235(e) has been revised to clarify that only those recused under this section may participate in Council deliberations; members with financial interests in a particular matter, other than harvesting, marketing, or processing, may not participate if precluded by 18 U.S.C. 208 and § 600.225(b)(8)(i).

Section 600.235(f)(4) directs Council Chairs not to count the vote of a member who attempts to vote despite a recusal determination.

Section 600.235(f)(5) clarifies that the NOAA General Counsel's ruling on review of a recusal determination is not cause for invalidation or reconsideration of the Council's decision by the Secretary.

Section 3507 of the Paperwork Reduction Act (PRA) requires agencies to inventory and display a current control number assigned by the Director, OMB, for each agency information collection. Section 902.1(b) of 15 CFR identifies the location of NOAA regulations for which OMB control numbers have been issued. This final rule amends § 902.1(b) by adding the control number for this collection of information.

Classification

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

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial

number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

This rule contains a collection-of-information requirement subject to the PRA. This collection-of-information requirement has been approved by OMB under control number 0648–0192. Public reporting burden is estimated to average 35 minutes per response to fill out and submit the Financial Interest Form, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding burden estimates, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 600

Administrative practice and procedure, Confidential business information, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

Dated: November 13, 1998.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR chapter IX and 50 CFR chapter VI are amended as follows:

15 CFR Chapter IX

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

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

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

2. In § 902.1, paragraph (b), the table is amended by adding in numerical order the following entry to read as follows:

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

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (All numbers begin with 0648–)
* * * * *	
50 CFR	
* * * * *	
600.235	–0192
* * * * *	

* * * * *

50 CFR Chapter VI
PART 600—MAGNUSON-STEVENS ACT PROVISIONS

3. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

4. In § 600.225, the last sentence in paragraph (b)(4) is removed, and paragraph (b)(8) is revised to read as follows:

§ 600.225 Rules of conduct.

* * * * *

(b) * * *

(8)(i) Except as provided in § 600.235(h) or in 18 U.S.C. 208, no Council member may participate personally and substantially as a member through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a particular matter in which the member, the member's spouse, minor child, general partner, organization in which the member is serving as officer, director, trustee, general partner, or employee, or any person or organization with whom the member is negotiating or has any arrangement concerning prospective employment, has a financial interest. (Note that this financial interest is broader than the one defined in § 600.235(a).)

(ii) No Council member may participate personally and substantially as a member through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a particular matter primarily of individual concern, such as a contract, in which he or she has a financial interest, even if the interest has been disclosed in accordance with § 600.235.

5. Section 600.235 is revised to read as follows:

§ 600.235 Financial disclosure.

(a) *Definitions.* For purposes of § 600.235:

Affected individual means an individual who is—

(1) Nominated by the Governor of a state or appointed by the Secretary of Commerce to serve as a voting member of a Council in accordance with section 302(b)(2) of the Magnuson-Stevens Act; or

(2) A representative of an Indian tribe appointed to the Pacific Council by the Secretary of Commerce under section 302(b)(5) of the Magnuson-Stevens Act who is not subject to disclosure and recusal requirements under the laws of an Indian tribal government.

Council decision means approval of a fishery management plan (FMP) or FMP amendment (including any proposed regulations); request for amendment to regulations implementing an FMP; finding that an emergency exists involving any fishery (including recommendations for responding to the emergency); and comments to the Secretary on FMPs or amendments developed by the Secretary. It does not include a vote by a committee of a Council.

Designated official means an attorney designated by the NOAA General Counsel.

Financial interest in harvesting, processing, or marketing (1) includes:

(i) Stock, equity, or other ownership interests in, or employment with, any company, business, fishing vessel, or other entity engaging in any harvesting, processing, or marketing activity in any fishery under the jurisdiction of the Council concerned;

(ii) Stock, equity, or other ownership interests in, or employment with, any company or other entity that provides equipment or other services essential to harvesting, processing, or marketing activities in any fishery under the jurisdiction of the Council concerned, such as a chandler or a dock operation.

(iii) Employment with, or service as an officer, director, or trustee of, an association whose members include companies, vessels, or other entities engaged in harvesting, processing, or marketing activities, or companies or other entities providing services essential to harvesting, processing, or marketing activities in any fishery under the jurisdiction of the Council concerned; and

(iv) Employment with an entity providing consulting, legal, or representational services to any entity engaging in, or providing equipment or services essential to, harvesting, processing, or marketing activities in any fishery under the jurisdiction of the

Council concerned, or to any association whose members include entities engaged in the activities described in paragraphs (1) (i) and (ii) of this definition;

(2) Does not include stock, equity, or other ownership interests in, or employment with, an entity engaging in advocacy on environmental issues or in scientific fisheries research in any fishery under the jurisdiction of the Council concerned, unless it is covered under paragraph (1) of this definition. A financial interest in such entities is covered by 18 U.S.C. 208, the Federal conflict-of-interest statute.

(b) *Reporting.* (1) The Magnuson-Stevens Act requires the disclosure by each affected individual of any financial interest in harvesting, processing, or marketing activity, and of any such financial interest of the affected individual's spouse, minor child, partner, or any organization (other than the Council) in which that individual is serving as an officer, director, trustee, partner, or employee. The information required to be reported must be disclosed on NOAA Form 88–195, ''Statement of Financial Interests for Use by Voting Members and Nominees of Regional Fishery Management Councils'' (Financial Interest Form), or such other form as the Secretary may prescribe.

(2) The Financial Interest Form must be filed by each nominee for Secretarial appointment with the Assistant Administrator by April 15 or, if nominated after March 15, 1 month after nomination by the Governor. A seated voting member appointed by the Secretary must file a Financial Interest Form with the Executive Director of the appropriate Council within 45 days of taking office; must file an update of his or her statement with the Executive Director of the appropriate Council within 30 days of the time any such financial interest is acquired or substantially changed by the affected individual or the affected individual's spouse, minor child, partner, or any organization (other than the Council) in which that individual is serving as an officer, director, trustee, partner, or employee; and must update his or her form annually and file that update with the Executive Director of the appropriate Council by February 1 of each year.

(3) The Executive Director must, in a timely manner, provide copies of the financial disclosure forms and all updates to the NMFS Regional Administrator for the geographic area concerned, the Regional Attorney who advises the Council, the Department of Commerce Assistant General Counsel for Administration, and the NMFS Office of Sustainable Fisheries. The completed financial interest forms will be kept on file in the office of the NMFS Regional Administrator for the geographic area concerned and at the Council offices, and will be made available for public inspection at such offices during normal office hours. In addition, the forms will be made available at each Council meeting or hearing.

(4) Councils must retain the disclosure form for each affected individual for at least 5 years after the expiration of that individual's last term.

(c) *Restrictions on voting.* (1) No affected individual may vote on any Council decision that would have a significant and predictable effect on a financial interest disclosed in his/her report filed under paragraph (b) of this section.

(2) As used in this section, a Council decision will be considered to have a ''significant and predictable effect on a financial interest'' if there is a close causal link between the decision and an expected and substantially disproportionate benefit to the financial interest in harvesting, processing, or marketing of any affected individual or the affected individual's spouse, minor child, partner, or any organization (other than the Council) in which that individual is serving as an officer, director, trustee, partner, or employee, relative to the financial interests of other participants in the same gear type or sector of the fishery. The relative financial interests of the affected individual and other participants will be determined with reference to the most recent fishing year for which information is available. However, for fisheries in which IFQs are assigned, the percentage of IFQs assigned to the affected individual will be dispositive.

(3) ''Expected and substantially disproportionate benefit'' means a quantifiable positive or negative impact with regard to a matter likely to affect a fishery or sector of the fishery in which the affected individual has a significant interest, as indicated by:

(i) A greater than 10-percent interest in the total harvest of the fishery or sector of the fishery in question;

(ii) A greater than 10-percent interest in the marketing or processing of the total harvest of the fishery or sector of the fishery in question; or

(iii) Full or partial ownership of more than 10 percent of the vessels using the same gear type within the fishery or sector of the fishery in question.

(d) *Voluntary recusal.* An affected individual who believes that a Council decision would have a significant and predictable effect on that individual's financial interest disclosed under paragraph (b) of this section may, at any time before a vote is taken, announce to the Council an intent not to vote on the decision.

(e) *Participation in deliberations.* Notwithstanding paragraph (c) of this section, an affected individual who is recused from voting under this section may participate in Council and committee deliberations relating to the decision, after notifying the Council of the voting recusal and identifying the financial interest that would be affected.

(f) *Requests for determination.* (1) At the request of an affected individual, the designated official shall determine for the record whether a Council decision would have a significant and predictable effect on that individual's financial interest. The determination will be based upon a review of the information contained in the individual's financial disclosure form and any other reliable and probative information provided in writing. All information considered will be made part of the public record for the decision. The affected individual may request a determination by notifying the designated official—

(i) Within a reasonable time before the Council meeting at which the Council decision will be made; or

(ii) During a Council meeting before a Council vote on the decision.

(2) The designated official may initiate a determination on the basis of—

(i) His or her knowledge of the fishery and the financial interests disclosed by an affected individual; or

(ii) Written and signed information received within a reasonable time before a Council meeting or, if the issue could not have been anticipated before the meeting, during a Council meeting before a Council vote on the decision.

(3) At the beginning of each Council meeting, or during a Council meeting at any time reliable and probative information is received, the designated official shall announce the receipt of information relevant to a determination concerning recusal, the nature of that information, and the identity of the submitter of such information.

(4) If the designated official determines that the affected individual may not vote, the individual may state for the record how he or she would have voted. A Council Chair may not allow such an individual to cast a vote.

(5) A reversal of a determination under paragraph (g) of this section may not be treated as cause for invalidation or reconsideration by the Secretary of a Council's decision.

(g) *Review of determinations.* (1) Any Council member may file a written request to the NOAA General Counsel for review of the designated official's determination. A request for review must be received within 10 days of the determination.

(2) A request must include a full statement in support of the review, including a concise statement as to why the Council's decision did or did not have a significantly disproportionate benefit to the financial interest of the affected individual relative to the financial interests of other participants in the same gear type or sector of the fishery, and why the designated official's determination should be reversed.

(3) If the request for review is from a Council member other than the affected individual whose vote is at issue, the requester must provide a copy of the request to the affected individual at the same time it is submitted to the NOAA General Counsel. The affected individual may submit a response to the NOAA General Counsel within 10 days from the date of his/her receipt of the request for review.

(4) The NOAA General Counsel must complete the review and issue a decision within 30 days from the date of receipt of the request for review. The NOAA General Counsel will limit the review to the record before the designated official at the time of the determination, the request, and any response.

(h) *Exemption from other statutes.* The provisions of 18 U.S.C. 208 regarding conflicts of interest do not apply to an affected individual who is in compliance with the requirements of this section for filing a financial disclosure report.

(i) *Violations and penalties.* It is unlawful for an affected individual to knowingly and willfully fail to disclose, or to falsely disclose, any financial interest as required by this section, or to knowingly vote on a Council decision in violation of this section. In addition to the penalties applicable under § 600.735, a violation of this provision may result in removal of the affected individual from Council membership.

[FR Doc. 98–30898 Filed 11–18–98; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8784]

RIN 1545–AV89

Substantiation of Business Expenses—Use of Mileage Allowances to Substantiate Automobile Expenses; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to temporary regulations.

SUMMARY: This document contains a correction to Treasury Decision 8784, which was published in the **Federal Register** on Thursday, October 1, 1998 (63 FR 52600) relating to the use of mileage allowances to substantiate automobile business expenses.

DATES: This correction is effective October 1, 1998.

FOR FURTHER INFORMATION CONTACT: Donna Crisalli, (202) 622–4920 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations that are the subject of this correction are under section 274 of the Internal Revenue Code.

Need for Correction

As published, TD 8784 contains an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the temporary regulations (TD 8784), which were the subject of FR Doc. 98–26226, is corrected as follows:

§ 1.274(d) –1T [Corrected]

On page 52601, column 1, § 1.274(d)-1T(a)(1) and (2), the last line of the paragraph, the language ''guidance, see § 1.274(d)-1(a)(1).'' is corrected to read ''guidance, see § 1.274(d)-1(a)(1) and (2).''.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 98–30875 Filed 11–18–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CCGD08–98–068]

RIN 2115–AE47

Drawbridge Operating Regulation; Mississippi River, Iowa and Illinois

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: The Commander, Eighth Coast Guard District is temporarily changing the regulation governing the Clinton Railroad Drawbridge, Mile 518.0, Upper Mississippi River. The drawbridge will require twenty-four hours advance notice for openings from 21 December 1998 to 1 March 1999. This temporary rule is issued to allow bridge maintenance during winter conditions when closures of Army Corps of Engineers' locks upstream and downstream from the bridge preclude normal waterway traffic.

DATES: This temporary rule is effective from 12:01 a.m. on December 21, 1998 until 12:01 a.m. on March 1, 1999.

ADDRESSES: The public docket and all documents referred to in this notice will be available for inspection and copying at room 2.107f in the Robert A. Young Federal Building at Director, Western Rivers, Operations (ob), Eighth Coast Guard District, 1222 Spruce Street, St. Louis, MO 63103–2832, between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Roger K. Weibusch, Bridge Administrator; Director, Western Rivers Operations, Eighth Coast Guard District, Bridge Branch, 1222 Spruce Street, St. Louis, MO 63103–2832, telephone number 314–539–3900, extension 378.

SUPPLEMENTARY INFORMATION:

Background

On October 3, 1998, the Union Pacific Railroad Company requested a temporary change to the operation of the Clinton Railroad swing bridge across the Upper Mississippi River, Mile 518.0 at Clinton, Iowa. Union Pacific Railroad Company requested that navigation temporarily provide twenty-four hours advance notice for bridge operation to facilitate required bridge maintenance, between December 21, 1998 and March 1, 1999, when icing conditions and Army Corps of Engineers' lock closures preclude normal river traffic.

In accordance with 5 U.S.C. 533, a notice of proposed rulemaking has not been published and good cause exists

for making this rule effective in less than 30 days from publication since the details of the operation were not known until late October 1998. Thus, following normal rule making procedures would be impractical. Delaying implementation of the regulation will adversely impact navigation and would result in unnecessary additional operating costs to the bridge owner.

Discussion of Temporary Rule

The Clinton Railroad Drawbridge swingspan has a vertical clearance of 18.7 feet above normal pool in the closed to navigation position. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. Presently, the draw opens on signal for passage of river traffic. This temporary drawbridge operation amendment has been coordinated with the commercial waterway operators who do not object. Winter conditions on the Upper Mississippi River, coupled with the closure of Corps of Engineers' locks 11, 12, 19 and 20 until March of 1999, will result in a significant decrease in vessel traffic and therefore substantially reduce the demand for bridge openings.

The Clinton Railroad Drawbridge, Mile 518.0 Upper Mississippi River, is located downstream from Lock 12 and upstream from Lock 19. Performing maintenance on this bridge during the winter is preferred by both waterway users and bridge owners since very few vessels, if any, are impacted during this timeframe. If this maintenance were performed during the commercial navigation season, there would be a significant number of delays to vessel traffic caused by the prolonged bridge closures. Additionally, vessel traffic would be burdened with a 24-hour-advance notification requirement during the heavily transited commercial navigation season.

Regulatory Evaluation

This temporary rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this temporary rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This is because river traffic will be virtually nonexistent as a result of planned lock closures and ice accumulations during the maintenance period.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this temporary rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' may include small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and governmental jurisdictions with populations of less than 50,000.

Because it expects the impact of this action to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b), that this action will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This temporary rule does not provide for a collection-of-information requirement under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this temporary rule under the principles and criteria contained in Executive Order 12612 and has determined that this temporary rule does not raise sufficient implications of federalism to warrant the preparation of a Federalism Assessment. The authority to regulate the permits of bridges over the navigable waters of the U.S. belongs to the Coast Guard by Federal statutes.

Environmental

The Coast Guard considered the environmental impact of this temporary rule and concluded that under Figure 2–1, paragraph 32(a) of Commandant Instruction M16475.1C, this temporary rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard is amending Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Effective 12:01 a.m. on December 21, 1998, through 12:01 a.m. on March 1, 1999, § 117.T408 is added to read as follows:

§ 117.T408 Upper Mississippi River.

Clinton Railroad Drawbridge Mile 518.0 Upper Mississippi River. From 12:01 a.m. on December 21, 1998 through 12:01 a.m. on March 1, 1999, the drawspan requires twenty-four hours advance notice for bridge operation. Bridge opening requests must be made 24 hours in advance by calling the Clinton Yardmaster's office at 319–244–3204 anytime; 319–244–3269 weekdays between 7 a.m. and 3:30 p.m.; or page Mr. Darrell Lott and 800–443–7243, PIN#009096.

Dated: November 6, 1998.

A.L. Gerfin, Jr.

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

[FR Doc. 98–30958 Filed 11–18–98; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WA 67–7142a; FRL—6188–1]

Approval and Promulgation of Implementation Plans: Washington

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: Environmental Protection Agency (EPA) approves a minor revision to the State Implementation Plan (SIP) for Washington. Pursuant to section 110 (a) of the Clean Air Act (CAA), the Washington Department of Ecology (WDOE) submitted a request dated January 8, 1998, to EPA to revise the SIP and include a variance to a permit issued by a local air pollution control agency, the Puget Sound Air Pollution Control Agency (PSAPCA), to the U.S. Army for the operation of three heat recovery incinerators located at Fort Lewis.

DATES: This action is effective on January 19, 1999 without further notice, unless EPA receives adverse comment by December 21, 1998. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be addressed to: Ms. Montel Livingston, SIP Manager, Office of Air Quality (OAQ–107), EPA, 1200 Sixth Avenue, Seattle, Washington 98101.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. Copies of material submitted to EPA may be examined during normal business hours at the following locations: EPA Region 10, Office of Air Quality, 1200 Sixth Avenue (OAQ–107), Seattle, Washington 98101, and WDOE, P.O. box 47600, Olympia, Washington 98504.

FOR FURTHER INFORMATION CONTACT: Mahbubul Islam, Office of Air Quality (OAQ–107), EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–6985.

SUPPLEMENTARY INFORMATION:

I. Background

WDOE submitted a revision of the Washington SIP to EPA dated January 8, 1998 consisting of a minor amendment to PSAPCA Regulations I, Article 3, Section 3.23, Alternate Means of Compliance, (new) Subsection NOC#7216.

The U.S. Army has requested a variance to a permit issued by the PSAPCA for the operation of three heat recovery incinerators located at Fort Lewis. Through the permit approval process, PSAPCA determined that the incinerators employed the best available control technology (BACT) and the toxic air contaminants would not exceed acceptable source impact levels. The permit required the facility to meet emission limits specified in EPA guidance and use good combustion practices to minimize emissions of hazardous air pollutants (HAPs). Fort Lewis performed source testing of the three incinerator units and demonstrated their ability to meet the permit emission limits. However, the heat recovery incinerators cannot comply with the residence time requirements in the WDOE solid waste incinerator rule (WAC 173–434–160). The intent of the residence time design requirement is to assure adequate control of emissions without requiring extensive testing. Fort Lewis requested a variance from the residence time requirements, and will instead demonstrate compliance through annual source testing as specified in the permit.

II. Summary of Action

EPA is, by today's action, approving a permit variance issued to the U.S. Army, operator and owner of three heat recovery incinerators at Fort Lewis. PSAPCA held a public hearing on this variance request on December 1, 1997 at Fort Lewis. In addition, after a thirty day comment period, the Board of Directors of PSAPCA and WDOE held public hearings on December 11, 1997. No public comment was received during the comment period.

The U.S. Army requests that three heat recovery incinerators at Fort Lewis be granted a variance to WAC 173–434 160(2), requiring a one second residence time at 1800° F for all combustion gases after the last over fire air port. Due to the limited size of the incinerator firebox, the volume of airflow at design temperatures does not allow a residence time of one second. In order to comply with the residence time requirement, major structural modifications need to be made. The U.S. Army estimated that such a change to the incinerator building would cost in excess of $5 million. Such an additional cost burden on the American taxpayer is unwarranted since all air emission standards will be met by alternative means and there is no environmental or public health hazard caused by non-compliance with the one second residence time rule.

The residence time requirement is intended to minimize the formation of Dioxin during the initial combustion of refuse. This regulation was enacted before the carbon injection became the control method to minimize Dioxin emissions from incinerators. The Fort Lewis incinerator injects powder activated carbon into the flue gases to remove Dioxin from the stack gases. Source testings at Fort Lewis incinerators show that their dioxin emissions to the atmosphere are well below acceptable limits specified in the permit. Fort Lewis will conduct annual emission testings to ensure that they meet the permit requirements and protect human health and environment.

This variance is requested for one year, during which time a permanent solution will be sought. Fort Lewis will cooperate with WDOE during the rule making process to revise the incinerator rule so that it allows demonstrating compliance with the intent of the regulation (control of HAPs) through alternative mechanisms.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective January 19, 1999 without further notice unless the Agency receives adverse comments by December 21, 1998.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on January 19, 1999 and no further action will be taken on the proposed rule.

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

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 approval action promulgated 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. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

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

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 19, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference.

Dated: November 3, 1998.

Jane S. Moore,

Acting Regional Administrator, Region X.

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

PART 52—[AMENDED]

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

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

Subpart WW—Washington

2. Section 52.2470 is amended by adding paragraph (c)(78) to read as follows:

§ 52.2470 Identification of plan.

* * * * *

(c) * * *

(78) EPA approves a minor revision to the SIP dated January 8, 1998 to include a variance to a permit issued to the U.S. Army for the operation of three heat recovery incinerators located at Fort Lewis by local air pollution control agency, the Puget Sound Air Pollution Control Agency.

(i) Incorporation by reference.

(A) Puget Sound Air Pollution Control Agency, Notice of Construction No. 7216, Date: Nov 25, 1997.

[FR Doc. 98–30847 Filed 11–18–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 412

[HCFA–1049–FC]

RIN 0938–AJ26

Medicare Program; Limited Additional Opportunity to Request Certain Hospital Wage Data Revisions for FY 1999

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

ACTION: Final rule with comment period.

SUMMARY: This final rule with comment period provides hospitals with a limited additional opportunity to request certain revisions to their wage data used to calculate the FY 1999 hospital wage index. In addition, it explains the criteria that must be met to request a revision, the types of revisions that will be considered, the procedures for requesting a revision, the implementation of wage index revisions, and other related issues. Requests for wage data revisions must be received by the date and time specified in the ''DATES'' section of this preamble. We will implement revisions to the hospital wage index in accordance with this final rule with comment period on a prospective basis only.

DATES: *Effective date:* The provisions of this final rule with comment period are effective on November 19, 1998.

Request date: Requests for wage data revisions will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. eastern standard time on December 3, 1998.

Comment date: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. eastern standard time on December 21, 1998.

ADDRESSES: *Request for wage data revisions:* Revision request must be sent to the following address: Health Care Financing Administration, Center for Health Plans and Providers, Division of Acute Care, Mail Stop: C4–05–27, 7500 Security Boulevard, Baltimore, MD 21244–1850, Attention: Stephen Phillips.

Comments: Mail an original and 3 copies of written comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1049–FC, P.O. Box 7517, Baltimore, MD 21244–1850.

If you prefer, you may deliver an original and 3 copies of your written comments to one of the following addresses: Room 443-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201, or Room C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Information collection requirements: For comments that relate to information collection requirements, mail a copy of comments to the following: Health Care Financing Administration, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Room C2–26–17, 7500 Security Boulevard, Baltimore, MD 21244–1850, Attn: John Burke HCFA–1049–NC, and the Office of Management and Budget, Office of Information and Regulatory Affairs, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Allison Herron Eydt, HCFA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Stephen Phillips, (410) 786–4531.

SUPPLEMENTARY INFORMATION:

Comments, Procedures, Availability of Copies, and Electronic Access

Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1049–FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443–G of the Department's office at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 to 5 p.m. (phone: (202) 690–7890).

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I. Introduction

Section 1886(d)(3)(E) of the Social Security Act (the Act) requires that, as part of the methodology for determining prospective payments to hospitals for inpatient operating costs, the Secretary must adjust standardized amounts ''for area differences in hospital wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the hospital compared to the national average hospital wage level.'' In addition, section 1886(d)(3)(E) of the Act requires that the hospital wage index be updated annually and that updates or adjustments to the hospital wage index be budget neutral.

In the July 31, 1998 **Federal Register** (63 FR 40966), we published hospital inpatient prospective payment rates and policies for Federal fiscal year (FY) 1999, including the hospital wage index. The FY 1999 wage index is based on data from Medicare cost reports for cost reporting periods beginning in FY 1995. This cost report data is submitted by hospitals and certified by hospitals. Before the calculation of the FY 1999 hospital wage index was published on July 31, 1998, we provided opportunities to hospitals to request wage data revisions and to verify wage data in HCFA's files. We established

deadlines for requesting wage data revisions.

Notwithstanding these deadlines, numerous hospitals have contacted us to request revisions to the data reflected in the FY 1999 hospital wage index. Many of these requests relate to issues arising from hospitals failing to report costs in the first place and failing to request revisions, or hospitals that failed to verify the final wage data. However, it has come to our attention that certain aspects of the development of the FY 1999 wage index may have led to some confusion among the hospital community.

In light of the totality of the circumstances, as discussed below in section III of this preamble, we are providing hospitals with an additional opportunity to request limited types of revisions to the wage data used to calculate the FY 1999 hospital wage index. This final rule with comment period explains the types of revisions we will consider, the procedures for requesting revisions, the implementation of wage index revisions, and related issues.

II. Development of the FY 1999 Wage Index

As noted above, the FY 1999 hospital wage index is based on data submitted by hospitals on Medicare cost reports for cost reporting periods beginning in FY 1995. These cost reports reflected changes to the manner in which we required hospitals to report certain types of costs, in particular, certain ''wage-related costs.''

The development of the FY 1999 wage index also reflected changes to the process for requesting wage data revisions. Under the timetable for developing the wage index for FY 1998, we released a public use wage data file in mid-August 1997, and hospitals could request corrections for certain errors (data entry or tabulation errors) up until September 15, 1997 (after publication of the final rule on August 29, 1997, thus necessitating publication of a subsequent correction notice). For the development of the FY 1999 wage index, we revised the timetable for making available public use wage data files and for requesting revisions to wage data.

The new process was designed so that the wage index published in the final rule would incorporate all revisions, including those to correct data entry or tabulation errors by the intermediary or HCFA as reflected in a ''final'' public use file released prior to publication of the final rule. We gave hospitals opportunities to examine the wage data used to construct the proposed and the final FY 1999 hospital wage indices, by making available two public use data files containing the FY 1995 hospital wage data. In memoranda dated February 2 and April 21, 1998, we instructed Medicare fiscal intermediaries to inform the hospitals they serve of the availability of the wage data files and the process and time frame for hospitals to request revisions. The proposed and the final wage data files were made available February 6 and May 14, 1998, respectively, through the Internet on HCFA's home page (http://www.hcfa.gov). We instructed fiscal intermediaries to advise hospitals of the alternative availability of these data through their representative hospital organizations or directly from HCFA.

Thus, under the timetable for developing the FY 1999 wage index, we made available the final public use wage data file in May (rather than August) and hospitals had to request corrections for data entry or tabulation errors by the intermediary or HCFA by June 5, 1998 (rather than mid-September as in past years).

After developing the final wage index, it came to our attention that hospitals may have been confused by certain aspects of the development of the FY 1999 wage index, as discussed below.

III. Provisions of the Final Rule With Comment Period

A. Limited Additional Opportunity to Request Certain Wage Data Revisions for FY 1999

As explained further below, in this final rule with comment period, we are providing hospitals a limited opportunity to request limited types of revisions to the wage data used to calculate the FY 1999 wage index. We are also addressing related issues. We are providing hospitals with an additional opportunity to request certain limited types of revisions because of the unique confluence of circumstances relating to the development and application of the FY 1999 wage index (as explained further below).

B. Criteria for Requesting Revisions and Explanation of the Types of Revisions

We are providing a window of opportunity from the date of publication of this final rule with comment period until the date and time specified in the **DATES** section of this preamble for hospitals to request revisions to their FY 1995 wage data, if they meet one of the following criteria:

- The hospital's data on the May 1998 public use file is recorded as zero on Line 28 of Worksheet S–3, Part III (wage-related costs).
- The hospital's data on the May 1998 public use file is recorded as zero in either column 3 or 4 (but not both), with nonzero data in the other column, for Lines 2, 4, 6, or 33 of Worksheet S–3, Part III.
- The hospital properly requested a wage data revision by March 9, 1998, the fiscal intermediary approved a revision (as reflected in a revised Worksheet S–3), but the fiscal intermediary or HCFA made a data entry or tabulation error.

We address each category in more detail below. We will not consider requests for other types of revisions. Requests from hospitals meeting these criteria must be limited to these specific criteria.

1. Zero Wage-related Costs on Line 28 of Worksheet S–3, Part III

The Medicare cost reports for cost reporting periods beginning in FY 1995 reflected changes to the wage data portions (Parts II, III, and IV) of Worksheet S–3. The FY 1999 wage index reflects, for the first time, these changes to the cost report. We discussed these changes in the rulemaking process for FY 1995, and we see no reason why hospitals should not have properly reported these costs. Most hospitals did report these costs, but it has come to our attention that a number of hospitals incorrectly reported zero costs or otherwise did not include costs on Line 28 of Worksheet S–3, Part III (wage-related costs).

If the May 1998 public use file reflects zero wage-related costs for a hospital, the hospital may request a revision to Line 28 of Worksheet S–3, Part III. The hospital must provide adequate verifiable documentation to support the costs.

2. Zero Costs or Zero Hours (But Not Both) on Lines 2, 4, 6, or 33 of Worksheet S–3, Part III

For certain categories of costs, hospitals are required to report *both* hours and dollars. It has come to our attention that a number of hospitals reported either (1) nonzero dollars but zero hours or (2) nonzero hours but zero dollars, on Lines 2, 4, 6, or 33 of Worksheet S–3. To calculate each hospital's average hourly wage, we summed the dollars (Column 3) and hours (Column 4), respectively, for lines 2, 4, 6, 32, and 33. However, if a hospital reported zero dollars or zero hours, but not both, for any of these lines (this situation did not arise on line 32), we excluded the corresponding nonzero amount for that line in

calculating the hospital's average hourly wage.

Under this final rule with comment period, we are permitting hospitals to request revisions if the hospital improperly reported zero dollars or zero hours, but not both, for Lines 2, 4, 6, or 33 of Worksheet S–3. In order for a hospital's request for revision to be granted, a hospital must satisfactorily justify that these costs and hours should be included. For example, if a hospital reported $500,000 in physician Part A salaries but reported zero hours attributable to physician Part A services, in order for a request to be granted, the hospital must report accurate hours related to those costs or otherwise explain why that $500,000 should be included in the calculation.

3. Data Entry or Tabulation Errors

On May 14, 1998, we made available a ''final'' public use wage data file. In the May 8 proposed rule, we stated, ''If, after reviewing the final file, a hospital believes that its wage data are incorrect due to a fiscal intermediary or HCFA error in the entry or tabulation of the final wage data,'' the hospital had to request a revision by June 5, 1998 in order for the data to be revised.

It has come to our attention that the revised timetable for releasing the final wage file (May, rather than August) and the revised deadline for requesting revisions for data entry or tabulation errors (June 5, rather than mid-September) may have led to some confusion. If a hospital properly requested a revision by March 9, 1998, and the fiscal intermediary approved the revision (as reflected in a revised Worksheet S–3), but there was an error in data entry or tabulation, we will consider a hospital's request for revision to the wage data notwithstanding the June 5, 1998 deadline. Thus, we are effectively extending the June 5, 1998 deadline for correcting certain data entry or tabulation errors.

C. Rationale for Accepting Limited Types of Revisions

We will consider requests only for the limited types of revisions specified above. We will not consider requests for other types of revisions.

We are providing for these limited revisions because of the totality of the circumstances, including—

- The number of hospitals contacting us about the same types of problems;
- The hardship that might result for a number of hospitals if we did not revise the wage data;
- The changes to the Medicare cost report, reflected for the first time in the FY 1999 wage index;
- The revised statutory timetable for publishing the proposed and final hospital inpatient prospective payment system rules, effective for the first time for FY 1999 (see section 4644 of the Balanced Budget Act of 1997); and
- The revised timetable for finalizing wage data (including the revised timetable for releasing the final public use wage data file and the revised timetable for requesting corrections of data entry and tabulation errors), applied for the first time in developing the FY 1999 wage index.

None of these factors, by itself, would be sufficient grounds for making a mid-year revision. For example, we believe we should not make a wage index revision merely because a single individual hospital might receive significantly lower payments as a result of its failure to properly report costs or its failure to properly request revisions and verify data. In deciding which types of revisions we would make, we considered the factors above not only in combination with each other, but also in light of the previous opportunities we provided to hospitals to verify data and request revisions.

We evaluated the totality of the circumstances and decided it was appropriate to make limited types of revisions. As indicated earlier, we believe most problems with wage data arise because hospitals fail to properly report costs on the cost report, fail to properly request revisions, or fail to verify the data that the intermediary and HCFA are using to calculate the wage index. We believe it would *not* be necessary or appropriate to consider, at this time, requests for any and all types of revisions to the FY 1995 wage data. We note that, if we permitted hospitals to request any and all revisions, it would presumably take longer for hospitals to receive revised wage indexes for FY 1999.

Also, we emphasize that this final rule with comment period should not be construed as an acknowledgment that the development of the FY 1999 wage index, as reflected in the July 31 **Federal Register**, was in any way unfair or unreasonable. Moreover, it should not be construed as an acknowledgment that mid-year corrections may be appropriate in other contexts or in other years. Many of our policies reflect balancing the competing considerations of finality, accuracy, and certainty, and many aspects of developing payment rates and policies require the use of the best data available *at the time*. As stated above, we are providing for limited wage data revisions for FY 1999 because of the totality of the circumstances in this context.

D. Procedures for Submission of Requests and Evaluation of Requests

A hospital seeking a revision to its FY 1995 wage data under the applicable criteria must submit a written request to *both* its fiscal intermediary and HCFA, clearly explaining the basis for the request. Each request must include all information and supporting documentation needed for HCFA and the fiscal intermediary to determine whether the request meets the applicable criteria, and to verify the accuracy of the requested revision.

A hospital seeking a revision must submit its request to the HCFA official whose name appears in the **ADDRESSES** section of the preamble. The request must be received by date and time specified in the **DATES** section of this preamble.

Upon receipt of a request for revision, HCFA will confer with the hospital's fiscal intermediary as necessary and appropriate. We will review each request and the supporting documentation and make a decision as to whether to grant the request in full, reject it in full, or grant it in part and reject it in part.

E. Implementation of Wage Index Revisions

We will implement the wage index revisions we make in accordance with the process described in this final rule with comment period on a prospective basis only. We note that the timing of wage index revisions, as well as other adjustments described below, will depend in part on the number of the requests that we receive. Also, we note that this process might result in wage index revisions for hospitals that do not request revisions, not only hospitals in the same labor market area as hospitals that request revisions, but also all other hospitals. This is because the hospital wage index measures relative wage levels across geographic areas, and reflects the average hourly wage in each labor market area as well as the national average hourly wage.

IV. Other Related Issues

A. Budget Neutrality and Adjustment to Standardized Amounts

Under section 1886(d)(3)(E) of the Act, ''adjustments or updates'' to the hospital wage index for a fiscal year ''shall be made in a manner that assures that aggregate payments . . . in the fiscal year are not greater than or less than those that would have been made in the year without such adjustment.'' Accordingly, to the extent that mid-year revisions to the hospital wage index would affect aggregate payments, we

will apply a budget neutrality adjustment to the standardized amounts so that aggregate payments ''are not greater than or less than those that would have been made in the year without [mid-year wage index] adjustment.'' With respect to individual hospitals who do not request revisions, we anticipate that the combined impact of wage index revisions and the budget neutrality adjustment will be minimal, because the ''cost'' of permitting wage index revisions to some hospitals will be spread out over all prospective payment hospitals.

As discussed in numerous **Federal Register** documents, we calculate a budget neutrality adjustment by simulating payments with and without the adjustment to the wage indexes. We would implement the budget neutrality adjustment (on a prospective basis) at the same time we implement the revised wage indexes.

Also, we note that the capital prospective payment system incorporates the hospital wage index for operating costs. Accordingly, we will incorporate the wage index revisions made in accordance with this final rule with comment period into capital prospective payments, including the geographic adjustment factor (GAF).

B. The Relationship Between Wage Revisions and the MGCRB Process

Under section 1886(d)(10) of the Act, the Medicare Geographic Classification Review Board (MGCRB) considers applications by hospitals to be reclassified to another geographic area for purposes of the wage index. For purposes of evaluating a hospital's application for reclassification for FY 2000, the MGCRB will use hospitals' average hourly wages incorporating all of the revisions made in accordance with this final rule with comment period at the time the MGCRB rules on the hospital's application.

V. Response to Comments

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

VI. Waiver of Notice of Proposed Rulemaking and 30-Day Delay in the Effective Date

We ordinarily publish a notice of proposed rulemaking to provide a period of public comment on a rule. However, we may waive that procedure if we find good cause that prior notice and comment would be impracticable, unnecessary, or contrary to public interest.

We find that it would be impracticable to undertake prior notice and comment procedures before implementing this final rule with comment period. This final rule with comment period provides hospitals with a limited opportunity to request very limited types of revisions to the wage data used to calculate the FY 1999 hospital wage index. As discussed earlier, we are providing this process for mid-year revisions because of the totality of the circumstances arising this year. These circumstances include the number of hospitals contacting us about the same types of wage data problems (reflecting apparent confusion about certain aspects of the development of the FY 1999 wage index) and the hardship that might result if we did not revise the wage data for these hospitals. If we delayed the wage data revision process in order to complete notice and comment procedures, we would delay the implementation of revised wage indexes and thus diminish the extent to which we address the potential hardship that might result for certain hospitals. Also, it is essential to finalize the FY 1999 wage index process expeditiously because the MGCRB will soon be evaluating and making decisions on applications for hospital geographic reclassification for FY 2000. The MGCRB's decision-making process for these applications requires analysis of the wage data used to calculate the FY 1999 wage index, and delaying the wage data revision process might result in problems in the MGCRB process.

For these reasons, we find that it would be impracticable to complete notice and comment procedures before providing hospitals with the opportunity to request revisions to the wage data used to calculate the FY 1999 wage index. Therefore, we find good cause to waive the notice of proposed rulemaking and to issue this document as a final rule with comment period. We are providing a 30-day period for public comment.

Also, we normally provide a delay of 30 days in the effective date of a regulation. However, if adherence to this procedure would be impracticable, unnecessary, or contrary to the public interest, we may waive the delay in the effective date. For the reasons discussed above, it is important that the provisions of this final rule with comment period have immediate effect so that we can finalize the FY 1999 wage index. Therefore, we find good cause to waive the usual 30-day delay in the effective date.

VII. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), agencies are required to provide a 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

While a hospital seeking a revision to its FY 1995 cost report wage data must submit a request, including all information and supporting documentation needed to determine whether the request meets the applicable criteria and to verify the accuracy of the requested revision, HCFA believes this request for information meets one of the exceptions to the definition of information under the PRA and is therefore not subject to the PRA. In summary, 5 CFR 1320.3(h)(9) states that information does not include, ''facts or opinions solicited through nonstandardized follow-up questions designed to clarify responses to approved collections of information''. Since we believe this voluntary request is not standardized and is designed only to provide hospitals with an additional opportunity to clarify information previously provided to HCFA in their 1995 cost report (HCFA–2552, OMB approval #0938–0050, current expiration date of 8/31/2000), HCFA believes that this exception to the PRA applies.

If you want to comment on this issue, please mail copies directly to the HCFA and OMB officials whose names appear

in the **ADDRESSES** section of this preamble.

VIII. Regulatory Impact Statement

We have examined the impacts of this final rule with comment period as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 million or less annually. For purposes of the RFA, all hospitals are considered to be small entities.

Section 1102(b) of the Act, requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area (MSA) and has fewer than 50 beds.

The implementation of this final rule with comment period will have isolated positive payment impacts in areas whose wage indexes include hospitals receiving wage data revisions as described above. We believe approximately 163 hospitals had zero on Line 28 of Worksheet S–3, Part III, on the May 1998 public use file. In addition, we believe approximately 127 hospitals had zero in either column 3 or 4 (but not both), with nonzero data in the other column, for Lines 2, 4, 6, or 33 of Worksheet S–3, Part III, on the May 1998 public use file. We do not know how many, if any, hospitals may be eligible under the third criterion: the hospital properly requested a wage data revision by March 9, 1998, the fiscal intermediary approved a revision, but the fiscal intermediary or HCFA made a data entry or tabulation error on the May 1998 public use file.

Of the approximately 163 hospitals potentially eligible under the first criterion, there are 59 rural hospitals (located in 15 different States) and 104 urban hospitals (located in 63 different MSAs). Of the approximately 127 hospitals potentially eligible under the second criterion, there are 40 rural hospitals and 87 urban hospitals.

All other hospitals' wage index values are likely to decrease slightly as a result of any revisions under this process. This is because the revisions will likely have the effect of slightly increasing the national average hourly wage ($20.7325 in the July 31, 1998 final rule (63 FR 40973)). Therefore, hospitals in areas without any revisions may experience a slight decrease in their wage index values when their area's unchanged average hourly wage is compared to the higher national average hourly wage.

In addition, as described above in section IV.A., we intend to implement any necessary budget neutrality adjustment at the same time we implement revised wage indexes. The impact of this adjustment will depend on the changes to the hospital wage index. With respect to hospitals in labor market areas whose average hourly wage is not affected, we believe the combined effect of the higher national average hourly wage and budget neutrality will be minimal. We will estimate and publish the entire impacts of payment changes associated with any revisions to hospitals' wage indexes in the subsequent document to this final rule with comment period.

IX. Contract With America Advancement Act (Public Law 104–121)

This rule has been determined to be a major rule as defined in Title 5, United States Code, section 804(2). Although the actual impact of this final rule with comment period cannot be determined prior to reviewing the revision requests, we believe it could range from $0 to $500 million. Ordinarily, under 5 U.S.C. 801, as added by section 251 of Pub. L. 104–121, a major rule shall take effect 60 days after the later of (1) the date a report on the rule is submitted to the Congress or (2) the date the rule is published in the **Federal Register**. However, section 808(2) of Title 5, United States Code, provides that, notwithstanding 5 U.S.C. 801, a major rule shall take effect at such time as the Federal agency promulgating the rule determines, if for good cause the agency finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. As indicated above, for good cause we find that it was impracticable to complete notice and comment procedures before publication of this rule. Accordingly, pursuant to 5 U.S.C. 808(2), this final rule with comment period is effective on November 19, 1998.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: October 30, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Approved: November 3, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 98–30992 Filed 11–17–98; 10:27 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 440 and 441

[HCFA–2060–F]

RIN 0938–AJ05

Medicaid Program; Inpatient Psychiatric Services Benefit for Individuals Under Age 21

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

ACTION: Final rule.

SUMMARY: This final rule amends the CFR by adding a choice of accreditation organizations that a State Medicaid agency may use to fulfill the requirement for Medicaid approval of, and payment to, psychiatric facilities other than psychiatric hospitals or psychiatric units of acute care hospitals, that provide the ''inpatient psychiatric services benefit for individuals under age 21''. In response to comments received on a prior proposed rule, we are retaining the requirement for accreditation of psychiatric facilities, but we are offering alternatives to accreditation by the Joint Commission on Accreditation of Health Care Organizations. Accreditation of psychiatric facilities, other than psychiatric hospitals and psychiatric units in acute care hospitals, could be performed by the Council on Accreditation of Services for Families and Children, the Commission on Accreditation of Rehabilitation Facilities, or any other accrediting body with comparable standards that is recognized by the State. This change is being made while we continue to develop HCFA standards for psychiatric facilities based on our evaluation of the comments that we received on the proposed standards that were published in the NPRM. All of the comments on

the remaining provisions of the proposed rule will be addressed in a second final rule to be published at a future date.

EFFECTIVE DATE: This rule is effective December 21, 1998.

ADDRESSES: *COPIES:* To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

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FOR FURTHER INFORMATION CONTACT: Mary Kay Mullen (410) 786–5480.

SUPPLEMENTARY INFORMATION:

I. Background

Medicaid is the Federally assisted State program authorized under title XIX of the Social Security Act (the Act) to provide funding for medical care provided to certain needy aged, blind and disabled persons, families with dependent children, and low-income pregnant women and children. Each State determines the scope of its program, within limitations and guidelines established by the Act and the implementing regulations at 42 CFR chapter IV, subchapter C. Each State submits a State plan, for our approval, that provides the basis for granting Federal funds to cover part of the expenditures incurred by the State for medical assistance and the administration of the program.

Section 1902(a) of the Act specifies the eligibility requirements that individuals must meet in order to receive Medicaid. Other parts of the Act describe the eligibility groups in detail and specify limitations on what may be paid for as ''medical assistance.''

II. Statutory and Regulatory History

The Social Security Amendments of 1972 (Public Law 92–603) amended the Medicaid statute to, among other things, allow States the option of covering inpatient psychiatric hospital services for individuals under age 21. In this preamble, we will refer to the ''inpatient psychiatric hospital services benefit for individuals under age 21'' as the ''psychiatric/21 benefit.'' Originally the statute required that the psychiatric/21 benefit be provided by psychiatric hospitals that were accredited by the Joint Commission on Accreditation of Hospitals. This organization is now called the Joint Commission on Accreditation of Healthcare Organizations. In this preamble, we will refer to this organization as the ''Joint Commission''.

In 1976, the Social and Rehabilitation Service, one of the Federal agencies that was later part of the merger that formed HCFA, published final regulations in 45 CFR part 249, implementing the psychiatric/21 benefit. These regulations allowed the coverage of this benefit in psychiatric facilities, other than psychiatric hospitals, that were accredited by the Joint Commission. The term ''psychiatric facility'' was used rather than the statutory term ''psychiatric hospital'' because the Joint Commission had modified its accrediting practices to encompass a broader range of settings providing psychiatric services. Since the statute then required Joint Commission accreditation, we wanted to keep our conditions of participation consistent with Joint Commission practices.

In 1981, we received comments from the Joint Commission expressing concern about our regulatory requirement for exclusive Joint Commission accreditation. The Joint Commission indicated that this Federal requirement was in conflict with Joint Commission policy that facilities should seek accreditation voluntarily. In response, we noted that the regulatory requirement for accreditation by the Joint Commission could not be removed because it was required by statute.

The Deficit Reduction Act of 1984 (DRA) amended section 1905(h) of the Act, removing the requirement for Joint Commission accreditation and adding the requirement that providers of the psychiatric/21 benefit meet the definition of a ''psychiatric hospital'' under the Medicare program as specified in section 1861(f) of the Act.

Despite this statutory change, based on our reading of Congressional intent, we did not remove the requirement for Joint Commission accreditation from § 441.151(b). Our reliance on Joint Commission accreditation was the only basis for coverage of the psychiatric/21 benefit in psychiatric facilities other than psychiatric hospitals. Our decision to retain the regulatory requirement for Joint Commission accreditation was based on the fact that, in enacting the 1984 amendment, the Congress gave no indication that it intended to narrow the psychiatric/21 benefit or alter our policy that had been in effect since 1976.

On November 5, 1990, the Omnibus Budget Reconciliation Act of 1990 (OBRA '90), amended section 1905(h) of the Act to specify that the psychiatric/21 benefit can be provided in psychiatric hospitals that meet the definition of that term in section 1861(f) of the Act ''or in another inpatient setting that the Secretary has specified in regulations.'' This amendment, which was effective as if it had been enacted earlier as part of the DRA, affirmed and effectively ratified our preexisting policy as articulated in subpart D of 42 CFR part 441, which interpreted sections 1905(a)(16) and 1905(h) of the Act as not being limited solely to psychiatric hospital settings. OBRA '90 provides our authority to allow other inpatient settings in addition to the psychiatric hospital setting for the psychiatric/21 benefit without continuing to require that providers obtain Joint Commission accreditation.

III. Provisions of the Proposed Rule

In the NPRM, published November 17, 1994 (59–FR–59624) we proposed to delete the existing regulatory requirement for Joint Commission accreditation in § 441.151(b) and to establish HCFA standards that psychiatric facilities other than psychiatric hospitals would have to meet. In response to the many comments on the issue of accreditation that are discussed below, we have reconsidered our position and have retained the accreditation requirement, but we have provided additional accreditation options. Under the new rule we are not requiring the exclusive use of the Joint Commission. We are allowing the option of using additional organizations in order to increase the States' flexibility in the choice of accrediting organizations. We will continue to evaluate the comments on

the proposed standards for facilities that provide the psychiatric/21 benefit and we will publish these comments and responses in a second final rule at a future date.

This final rule revises the requirements in §§ 441.151 and 440.160 only for psychiatric facilities providing the psychiatric/21 benefit. The requirements governing psychiatric hospitals and psychiatric units in acute care hospitals are not changed.

IV. Analysis of and Responses to Public Comments

In the preamble to the proposed rule, we included a history of the requirement for accreditation by the Joint Commission which has been part of the psychiatric/21 benefit since it was first enacted. In the NPRM, we proposed to delete the requirement for Joint Commission accreditation of psychiatric facilities other than psychiatric hospitals from the regulations, since the requirement had been deleted from the statute. The NPRM proposed new HCFA standards for psychiatric facilities other than psychiatric hospitals or psychiatric units of acute care hospitals that provided this benefit. We received a large number of comments on the subject of accreditation, more than on any other issue raised in the proposed rule.

Comment: Most of the commenters stated that the NPRM did not sufficiently acknowledge the value of accreditation by a national body.

Response: We proposed in the NPRM to remove the requirement that providers of the Psychiatric/21 benefit obtain Joint Commission accreditation. Forty eight percent of the 100 commenters stated that the proposed rule gave insufficient attention to the importance and the value that such accreditation can provide. We recognize the value of accreditation as an effective process to measure quality of service provided under this benefit. In response to the concerns of those groups that asked us to retain the requirement for accreditation, we are doing so, but we are also giving states flexibility to choose accrediting bodies for psychiatric facilities that are not psychiatric hospitals or psychiatric units of acute care hospitals that include not only the Joint Commission, but also the Council on Accreditation of Services for Families and Children (COA), the Commission on Accreditation of Rehabilitation Facilities (CARF), or any other accrediting body with comparable standards, that is recognized by the State. We will continue to evaluate the comments received on the proposed HCFA standards.

Comment: Many commenters said that it is inefficient to survey providers that are accredited. Other commenters urged HCFA to encourage States to waive the conditions of participation for providers that are accredited by a national accrediting body. Several other commenters suggested that HCFA allow accreditation by a national organization to serve as a substitute for meeting the proposed HCFA standards. One commenter said that HCFA should not allow States to require accreditation in addition to HCFA standards, because this would create another layer of requirements and entail another survey.

Response: We plan to reevaluate whether imposition of our standards on psychiatric facilities that are not psychiatric hospitals or units of acute care hospitals but are already accredited is necessary to ensure the quality of services provided under this benefit.

Comment: A number of commenters objected to the proposed deletion of the requirement for Joint Commission accreditation, which they referred to as the industry standard of quality.

Response: We are aware that accreditation is recognized by many as a standard of quality and for this reason we are retaining the requirement. However we are offering alternatives to Joint Commission accreditation of psychiatric facilities that are not psychiatric hospitals or units of acute care hospitals by adding COA, CARF, or any other accrediting body, recognized by the State, with comparable standards. As previously stated, this change is necessary while we continue to develop HCFA standards based on the comments we received on the proposed standards that were published in the NPRM.

Comment: A few commenters supported the deletion of the accreditation requirement.

Response: We are continuing to retain the requirement for psychiatric facility accreditation in this final rule while we evaluate the need for HCFA standards based on the comments received on the proposed standards and the relationship of these proposed standards to accreditation.

Comment: One commenter said that if the regulatory requirement is deleted, the State should require Joint Commission accreditation. A few commenters indicated that States should have the option of requiring accreditation if they consider it necessary.

Response: We agree with those commenters who support States having the option of determining what accrediting body will be recognized by the State to accredit psychiatric/21 benefit providers. Accordingly, we have amended language in this final rule to expand accreditation beyond the Joint Commission to include COA, CARF, or any other accrediting body with comparable standards that is recognized by the State.

V. Provisions of the Final Regulations

This final rule, changes §§ 441.151 and 440.160 of the proposed rule, returning it to the current regulatory requirement of accreditation but adding as alternative options to Joint Commission accreditation of psychiatric facilities that are not psychiatric hospitals or psychiatric units of an acute care hospital, accreditation by COA, CARF, or any other accrediting body, recognized by the State, with comparable standards. The remaining provisions of the proposed rule, together with all related comments and responses will be published in a final rule at a future date.

VI. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, we are soliciting public comment on this issue for the information requirement discussed below.

Section 441.151 General Requirements

Section 441.151(d) states that a psychiatric facility, or an inpatient program in a psychiatric facility, must certify in writing that Medicaid services provided to persons who have reached the age of 22 years are still necessary in the setting in which it will be provided (or is being provided in emergency circumstances) in accordance with § 441.152.

While this IRC is subject to the PRA, we believe that the burden associated

with this ICR is exempt in accordance with 5 CFR 13220.3(b)(2) because the time and effort and financial resources necessary to comply with this requirement would be incurred by persons in the normal course of their activities. These are reasonable and customary State practices and the State would impose this standard for efficient utilization of Medicaid services in the absence of a Federal requirement. Therefore we have assigned one (1) token hour of burden.

We have submitted a copy of this final rule to OMB for its review of the information collection requirement described above. This requirement is not effective until it has been approved by OMB.

If you comment on this information collection requirement, please mail copies directly to the following:

Health Care Financing Administration, Office of Information Services, Security and Standards Group Division of HCFA Enterprise Standards Room N2–14–26, 7500 Security Boulevard Baltimore, MD 21244–1850 Attention: Louis Blank, HCFA–2060–F

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attention: Allison Eydt, HCFA Desk Officer

VII. Regulatory Impact Statement

We have examined the impacts of this final rule as required by Executive Order 12866 (EO 12866), the Unfunded Mandates Act of 1995, and the Regulatory Flexibility Act (RFA) (Public Law 96–354). EO 12866 directs agencies to assess all cost and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits including potential economic, environmental, public health and safety effects, distributive impacts, and equity. A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (100 million or more annually).

Section 1102(b) of the Act requires us to prepare an RIA if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

A. The Unfunded Mandates Act

The Unfunded Mandates Reform Act of 1995 also requires (in section 202) that agencies perform an assessment of anticipated costs and benefits before proposing any rule that may result in an annual expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of $100 million.

B. Regulatory Flexibility Act

The RFA requires us to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, non-profit organizations and governmental agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 million or less annually. Intermediaries and carriers are not considered to be small entities.

This is not a major rule and there will be no additional costs to the Medicaid program as a result of this final rule.

For this reason we are not preparing an analysis for either the RFA or section 1102(b) of the Act, since we have determined, and we certify that this final rule would not result in a significant impact on a substantial number of small entities and would not have a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this final regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 440

Grant programs—health, Medicaid.

42 CFR Part 441

Family Planning, Grant programs—health, Infants and children, Medicaid, Penalties, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 42 CFR Chapter IV is amended as follows:

PART 440—SERVICES: GENERAL PROVISIONS

A. Part 440 is amended as follows:

1. The authority citation for part 440 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 440.160 is revised to read as follows:

§ 440.160 Inpatient psychiatric services for individuals under age 21.

''Inpatient psychiatric services for individuals under age 21'' means services that—

(a) Are provided under the direction of a physician;

(b) Are provided by—

(1) A psychiatric hospital or an inpatient psychiatric program in a hospital, accredited by the Joint Commission on Accreditation of Healthcare Organizations, or

(2) A psychiatric facility which is accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Council on Accreditation of Services for Families and Children, the Commission on Accreditation of Rehabilitation Facilities, or by any other accrediting organization, with comparable standards, that is recognized by the State.

(c) Meet the requirements in § 441.151 of this subchapter.

PART 441—SERVICES: REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES

B. Part 441 is amended as follows:

1. The authority citation for part 441 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 441.151 is amended by revising paragraphs (b) and (c) and adding a new paragraph (d) to read as follows:

§ 441.151 General requirements.

* * * * *

(b) By—

(1) A psychiatric hospital or an inpatient psychiatric program in a hospital, accredited by the Joint Commission on Accreditation of Healthcare Organizations; or

(2) A psychiatric facility which is accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Commission on Accreditation of Rehabilitation Facilities, the Council on Accreditation of Services for Families and Children, or by any other accrediting organization, with comparable standards that is recognized by the State.

(c) Before the individual reaches age 21 or, if the individual was receiving the services immediately before he or she reached age 21, before the earlier of the following—

(1) The date the individual no longer requires the services; or

(2) the date the individual reaches 22; and

(d) Certified in writing to be necessary in the setting in which it will be

provided (or is being provided in emergency circumstances) in accordance with § 441.152.

(Catalog of Federal Domestic Assistance Program No. 93,778 Medical Assistance Program)

Dated: June 2, 1998.

Nancy-Ann Min Deparle,

Administrator, Health Care Financing Administration.

Dated: August 12, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 98–30844 Filed 11–18–98; 8:45 am]

BILLING CODE 4120–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Part 1201

RIN 3045–AA15

Service of Process; Production or Disclosure of Official Material or Information; Correction

AGENCY: Corporation for National and Community Service.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations which were published in the **Federal Register** of Friday, January 30, 1998, (63 FR 4597). The regulations related to service of process and the production or disclosure of official material or information.

DATES: This correcting amendment is effective on November 23, 1998.

FOR FURTHER INFORMATION CONTACT: Britanya Rapp, (202) 606–5000, ext. 258, (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections affect persons who serve in the Office of Inspector General for the Corporation for National Service, and excludes persons who are subject to 5 U.S.C. 6322, those who request or release information under the Freedom of Information Act, 5 U.S.C. 552, and the Privacy Act, 5 U.S.C. 552a, or those who make disclosures to the Office of Inspector General from the scope of the final regulations.

Need for Correction

As published, the final regulations omitted provisions that need to be included to clarify the scope of the regulations.

List of Subjects in 45 CFR Part 1201

Administrative practice and procedure, Courts, Freedom of information.

Accordingly, 45 CFR part 1201 is corrected by making the following correcting amendments:

PART 1201—[AMENDED]

1. The authority citation for part 1201 is revised to read as follows:

Authority: 42 U.S.C. 12501 *et seq.*

2. Amend § 1201.2 to add paragraphs (b) and (c) to read as follows:

§ 1201.2 Scope.

* * * * *

(b) Sections 1201.3 through 1201.10 do not apply to:

(1) Testimony or records provided in accordance with the Office of Personnel Management regulations implementing 5 U.S.C. 6322.

(2) Requests for, and release of, records under the Freedom of Information Act, 5 U.S.C. 552, and the Privacy Act, 5 U.S.C. 552a.

(3) Disclosures to the Office of Inspector General or requests by the Office of Inspector General for official information or records.

(c) The procedures in this part apply to Corporation employees and official information within the Corporation Office of Inspector General. However, any determinations or other actions to be made by the General Counsel under this part, relating to employees or official information within the Office of Inspector General, shall be made by the Inspector General.

Dated: November 13, 1998.

Kenneth L. Klothen,

General Counsel.

[FR Doc. 98–30952 Filed 11–18–98; 8:45 am]

BILLING CODE 6050–28–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 5 and 90

[ET Docket No. 96–256, FCC 98–283]

Revision of the Experimental Radio Service Regulations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission revises the rules, which governs the Experimental Radio Service (ERS). This action will promote technical innovation and new services by encouraging experiments; ensure that experimental licenses do not result in abuse of our processes; eliminate unnecessary and burdensome experimental regulations; and protect public safety frequencies.

EFFECTIVE DATE: January 19, 1999.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Office of Engineering and Technology, (202) 418–2452.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order*, ET Docket—96–256, FCC 98–283, adopted October 22, 1998, and released October 27, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC, and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Summary of the Report and Order

1. The Notice of Proposed Rule Making (Notice), 62 FR 68698, December 30, 1996, in this proceeding, proposed a number of changes to part 5. The Commission noted that Section 303(g) of the Communications Act of 1934, as amended (the Act), authorizes the Commission to provide for experimental use of frequencies and charges the Commission with encouraging the larger and more effective use of radio in the public interest. The Commission further noted that the primary purpose of the ERS is to provide for experimental uses of radio frequencies and for development of techniques and systems that are not otherwise permitted under existing service rules, and that the ERS provides opportunity for manufacturers, inventors, entrepreneurs, and students to experiment with new radio technologies, new equipment designs, characteristics of radio wave propagation, or new service concepts related to the use of the radio spectrum.

2. Additionally, the Commission observed that it last updated its ERS rules in 1983. Since that time, there have been significant changes in services and technologies, and the competitive and rapidly developing telecommunications market has increased the importance of maintaining current and useful rules to govern the ERS. The Commission stated that based on its experience, it believed that the ERS rules should be significantly modified to eliminate unnecessary and burdensome rules and to better promote experimentation, while ensuring that the experimental process is not abused.

3. To promote technical innovation, we are permitting longer license terms, blanket licensing of related multiple experiments, construction of satellite experimental facilities to begin prior to licensing, and electronic filing of experimental applications. In the Notice, the Commission observed that, although experimental licenses are currently granted for two years, it may be beneficial to certain segments of the communications industry—in particular, companies that desire to conduct experiments that involve ongoing research and development—to provide for a longer license period. Accordingly, the Commission proposed an additional licensing option that would give applicants the ability to apply for a five-year license. However, the Commission requested comment on the appropriate length for such an extended license period and on whether this new class of experimental license should be limited to certain parties, such as those involved in long-term product development.

4. We concur with the commenting parties that an option for a five-year licensing term is desirable for all ERS applicants. We see no need to limit this option to only certain types of applicants, or to establish special rules for those applicants undertaking market studies, but we will require an applicant seeking an extended license term to show a need for the requested license term. We also conclude that license terms which vary from two to five years would provide greater flexibility, would serve the public interest, and should be permitted. We note that, currently, even with two-year license terms, we permit applicants to apply for licenses of terms shorter than two years. Therefore, we will extend this practice and will now permit applicants to apply for licenses of a term greater than two years, up to a maximum of five years. We are providing for this additional licensing flexibility to all experimental applicants who demonstrate that they require a license term longer than the normal two years. All licenses will be renewable upon an adequate showing of need.

5. The Commission proposed to amend the rules governing the filing of experimental applications in order to simplify the filing process and to encourage applications to be filed. Specifically, the Commission proposed to delete the existing requirement for the filing of separate applications for fixed stations and for mobile stations and to allow an applicant to apply for all of the stations needed in its experimental system, including fixed stations and associated mobile units, with a single experimental license application. Similarly, the Commission proposed to amend its rules in order to permit the filing of a single application for multiple experiments, when doing so would be appropriate for the proposed project. Additionally, in order to facilitate the electronic filing of applications, the Commission proposed to amend its rules to permit the Commission's Office of Engineering and Technology (OET) to accept electronic signatures.

6. We are adopting our proposal to allow an applicant to apply for all of the fixed and mobile stations in its experimental system on a single license application, to permit the filing of a single application for related multiple experiments, and to permit OET to accept electronic signatures. We find that these actions will facilitate experimentation and decrease the regulatory burden on our licensees and staff. Additionally, we adopt the recommendations of commenting parties that we allow applicants to apply for a blanket experimental license for all related facilities, allow manufacturers to conduct experiments under blanket nationwide licenses, and allow experimental licensees to change emission characteristics provided that their authorized maximum emissions envelope is not exceeded. We find that dispensing with the existing requirements for applying for additional authorizations in these circumstances will facilitate experimentation, increase administrative efficiency, and eliminate unnecessary regulatory burdens on ERS licensees. However, we will require licensees who operate under blanket licenses to notify us of the specific details of each individual experiment, including location, number of base and mobile units, power, emission designator, and any other pertinent technical information not specified by the blanket license; and we will require licensees who change emission characteristics to submit written notification to us demonstrating that such changes will not exceed the maximum emissions envelope established in the existing authorization.

7. The Commission also proposed to permit ERS licenses to be issued to schools, as well as to individual students; to remove the current restriction that students be required to contact the Commission's local field office in advance of scheduled operation; and to modify the frequency bands used for student authorizations. Specifically, the Commission proposed to delete the 2483.5–2500 MHz band from the set of frequencies designated for student authorizations and to replace it with the 2402–2450 MHz and 10.00–10.50 GHz bands. The Commission requested comment on whether student experiments could be accommodated in those bands without causing harmful interference to existing users. In addition, the Commission requested comment on whether the 5725–5825 MHz band should be made available for student authorizations. Further, in § 5.405, which sets forth the power limitation governing student authorizations, the Commission proposed to remove the somewhat arcane reference to ''dc plate power'' and replace it with the more conventional requirement that the ''effective isotropic radiated power'' (EIRP) not exceed 4 watts, and requested comment on whether this power level would be appropriate, given the distances over which student experimenters typically would seek to communicate. Finally, the Commission requested comment about the level of supervision and the knowledge of radiofrequency emissions that may be required to supervise adequately elementary school-age children.

8. Because we find that these proposals will facilitate student use of the radio spectrum and are otherwise in the public interest, we are adopting them, as in the rules. We are not, however, authorizing use of the 5725–5825 MHz band for student experimentation because that band was recently allocated for use by a new category of unlicensed equipment, known as Unlicensed National Information Infrastructure (U–NII) devices, and we find that there would be too great a potential for harmful interference in the band if student use were permitted in addition to the authorized use of the band. Specifically, because U–NII devices may operate anywhere in the 5725–5825 MHz band, there would be no way to ensure that a student experiment in a particular geographic area would not operate on the same frequency as a U–NII device.

9. Further, we are making special temporary authorizations (STAs) easier to obtain by making them independent of other experimental licenses and by expediting their processing where circumstances warrant. Special temporary authorizations are currently issued in cases in which a need is shown for operation of an authorized station for a limited time only, in a manner other than that specified in an existing experimental license, but not in conflict with our ERS rules.

10. We find that there is no reason to require a regular experimental license as a precondition for obtaining an STA. Permitting STAs to be granted on a

stand-alone basis will decrease the burden on applicants and will increase administrative efficiency. Further, we find that it is in the public interest to grant STAs on short notice in some instances and to specify more clearly the information needed in an application for STA. These changes will, respectively, permit applicants greater flexibility and decrease the burden on applicants and increase administrative efficiency.

11. To prevent abuses of our Experimental License processes, we are limiting the size and scope of each market study on a case-by-case basis, and we will immediately terminate any such study that we determine to be in excess of this size and scope. Additionally, we are limiting STAs to single, non-renewable authorizations. The Commission observed that in some instances its experimental processes have been abused by companies attempting to establish under the guise of experimental licenses commercial businesses that would normally require permanent licenses. Such abuse can be particularly unfair when a commercial business is being provided under an experimental license in competition with a similar business provided under a permanent license. Accordingly, the Commission proposed that as a condition of granting experimental licenses for market studies, it would require licensees to limit the size and scope of each study. The Commission stated that it would determine the appropriate limits for market studies on a case-by-case basis and terminate any such study that exceeds these limits. We conclude that some limits on market studies are necessary. Therefore, we find it appropriate to specify limits for market studies on a case-by-case basis.

12. The Commission also observed that there has been some abuse of STAs. The Commission stated that STAs are intended for temporary, short-term operation, but in the past some parties have used them as substitutes for experimental licenses by requesting repeated extensions of the STA and thus have created unnecessary administrative and paperwork burdens on the Commission's staff. The Commission therefore proposed to amend its rules to state that in the absence of extenuating circumstances no extensions of STAs would be granted, and that holders of STAs who wish to continue experimentation must apply for regular experimental licenses at least 60 days prior to expiration of their STAs.

13. Accordingly, we will require STA holders who wish to continue operations beyond the expiration date of the STA to file an ERS application no later than 15 days prior to that date. In such cases where the ERS application has been timely filed, the STA shall continue in force automatically until action is taken on the application. We also clarify that an STA must not be in conflict with the ERS rules, but in some instances an STA—like a regular experimental authorization—may be in conflict with rules for non-experimental radio services. We believe that these decisions will best serve the public interest by preventing abuses of our processes while providing reasonable flexibility to holders of STAs.

14. To reduce the regulatory burden, we are eliminating the requirement that experimental licensees contact our Compliance and Information Bureau (CIB) before commencing operation; eliminating rules that specify that a construction permit be obtained in conjunction with an experimental license and that expiration dates of experimental licenses be distributed over the 12 calendar months; and permitting licensees to make discrete changes in emission characteristics without being required to submit applications for modification, provided that they establish that such changes would not exceed the maximum emissions envelope in the existing authorization. Further, we are consolidating and reorganizing the rules, including transferring wildlife and ocean buoy tracking operations from Part 5 to Part 90. Finally, to protect public safety frequencies, we are adopting new rules to ensure that experiments avoid those frequencies except when there is a compelling need to use them.

Final Regulatory Flexibility Analysis

15. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603 (''RFA''), an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated into the Notice in ET Docket No. 96–256.[1] The Commission sought written public comments on the proposals in the Notice, including the IRFA. The Commission's Final Regulatory Flexibility Analysis (''FRFA'') in this Report and Order conforms to the RFA, as amended by the Contract With America Advancement Act of 1996 (CWAAA), Pub. L. 104–121, 110 Stat. 847 (1996).[2]

Need For and Objective of the Rules

16. In this decision, the Commission revises its Experimental Radio Service rules. This action is needed to promote technical innovation and new services by encouraging experiments, ensure that experimental licenses do not result in abuse of the Commission's processes, eliminate unnecessary and burdensome experimental regulations, and protect public safety frequencies.

Summary of Issues Raised by the Public Comments in Response to the IRFA

17. No comments were filed in direct response to the IRFA. However, in general comments to the Notice, some parties recommended modifications to our proposals. Specifically, parties recommended granting blanket experimental license for all related facilities, allowing manufacturers to conduct experiments under blanket nationwide licenses, and allowing experimental licensees to change emission characteristics that do not exceed the maximum emissions envelope in their existing authorizations without license modifications. We agree that these recommendations will facilitate experimentation and increase efficiency, and are adopting them.

Description and Estimate of Small Entities Subject to Which Rules Will Apply

18. The RFA generally defines a ''small business'' to be the same as a ''small business concern'' under the Small Business Act, 15 U.S.C. 632, unless the Commission has developed one or more definitions that are appropriate to its activities.[3] Under the SBA, a ''small business concern'' is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any individual criteria established by the Small Business Administration (SBA).[4]

19. The Commission has not developed a definition of small entities applicable to experimental licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to radiotelephone companies. SBA has defined a small business for Standard Industrial Classification (SIC) category 4812 (Radiotelephone Communications) to be small entities when they have fewer than 1500 employees.[5]

20. The Commission processes approximately 1,000 applications a year for experimental radio operations. About half of these are renewals and the

[1] 11 FCC Rcd 20130 (1996).

[2] Subtitle II of the CWAAA is ''The Small Business Regulatory Enforcement Fairness Act of 1996'' (SBREFA), codified at 5 U.S.C. 601 *et seq.*

[3] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 5 U.S.C. 632).

[4] 15 U.S.C. 632.

[5] 13 CFR 121.201 Standard Industrial Classification (SIC) Code 4812.

other half are for new licenses. The majority of experimental licenses are issued to companies such as Motorola and Department of Defense contractors such as Northrop, Lockheed and Martin Marietta. Businesses such as these may have as many as 200 licenses at one time. The majority of these applications, 70 percent, are from entities such as these. Given this fact, the remaining 30 percent of applications, we assume, for purposes of our evaluations in the FRFA, will be awarded to small entities, as that term is defined by the SBA.

Projected Reporting, Recordkeeping and Other Compliance Requirements of the Rules

21. Adoption of our proposals should decrease the regulatory burden on all experimental license applicants, including small entities. For example, we are permitting applicants the option of applying for a five-year experimental license, in addition to maintaining the current two-year license. We anticipate that a longer term license will reduce the number of renewal applications, and thereby decrease the regulatory burden. We are also removing an unnecessary requirement that STA applicants hold experimental licenses, and are clarifying the STA rules. We are also replacing existing Sections 5.55(a) and 5.55(b) of our rules with a single provision that will allow an applicant to apply for all of the stations in its experimental system, including fixed stations and associated mobile units, on one experimental license application; and similarly to modify Section 5.62 to permit the filing of only a single application for multiple related experiments. Additionally, this action increases the opportunities for students to obtain experimental authorizations, remove requirements that certain licensees notify the FCC's field offices prior to commencing operations, and eliminates obsolete rules. These changes should have a positive effect on small entities; however, we are unable to quantify all potential effects on such entities.

Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

22. We believe that our actions to revise our ERS rules will eliminate unnecessary and burdensome regulations for small entities. Section 303(g) of the Communications Act of 1934, as amended, charges the Commission with encouraging the larger and more effective use of radio in the public interest. We have considered the alternative of not making the proposed revisions; however, we believe that would not serve the public interest and would continue to place an unnecessary burden on licensees.

Report to Congress

23. The Commission shall send a copy of this Final Regulatory Flexibility Analysis, along with this Report and Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A).

List of Subjects

47 CFR Part 5

Radio.

47 CFR Part 90

Communications equipment, Radio.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble parts 5 and 90 of Title 47 of the Code of Federal Regulations are amended as follows:

1. The entire part 5 of Title 47 of the Code of Federal Regulations is revised as follows:

PART 5—EXPERIMENTAL RADIO SERVICE (OTHER THAN BROADCAST)

Subpart A—General

5.1 Basis and purpose.
5.3 Scope of service.
5.5 Definition of terms.

Subpart B—Applications and Licenses

5.51 Eligibility of license.
5.53 Station authorization required.
5.55 Filing of applications.
5.57 Who may sign applications.
5.59 Forms to be used.
5.61 Procedure for obtaining a special temporary authorization.
5.63 Supplementary statements required.
5.65 Defective applications.
5.67 Amendment or dismissal of applications.
5.69 Partial grants.
5.71 License period.
5.73 Experimental report.
5.75 Number of licenses required.
5.77 Change in equipment and emission characteristics.
5.79 Transfer and assignment of station authorization.
5.81 Discontinuance of station operation.
5.83 Cancellation provisions.
5.85 Frequencies and policy governing their assignment.
5.87 Frequencies for field strength surveys or equipment demonstrations.
5.89 School and student authorizations.
5.91 Notification to the National Radio Astronomy Observatory.
5.93 Limited market studies.

Subpart C—Technical Standards and Operating Requirements

5.101 Frequency stability.
5.103 Types of emission.
5.105 Authorized bandwidth.
5.107 Transmitter control requirements.
5.109 Antenna and tower requirements.
5.111 General limitations on use.
5.113 Adherence to program of research.
5.115 Station identification.
5.117 Suspension of transmission required.
5.119 Posting station licenses.
5.121 Retention of station records.
5.123 Inspection of stations.
5.125 Authorized points of communication.

2. The authority citation for part 5 is revised to read as follows:

Authority: Secs. 4, 302, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 302, 303. Interpret or apply sec. 301, 48 Stat. 1081, as amended; 47 U.S.C. 301.

PART 5—EXPERIMENTAL RADIO SERVICE (OTHER THAN BROADCAST)

Subpart A—General

§ 5.1 Basis and purpose.

(a) The rules following in this part are promulgated pursuant to the provisions of Title III of the Communications Act of 1934, as amended, which vests authority in the Federal Communications Commission to regulate radio transmissions and to issue licenses for radio stations.

(b) The purpose of this part is to prescribe the manner in which parts of the radio frequency spectrum may be made available for experimentation as defined and provided for in this part.

§ 5.3 Scope of service.

Stations operating in the Experimental Radio Service will be permitted to conduct the following type of operations:

(a) Experimentations in scientific or technical radio research.

(b) Experimentations under contractual agreement with the United States Government, or for export purposes.

(c) Communications essential to a research project.

(d) Technical demonstrations of equipment or techniques.

(e) Field strength surveys by persons not eligible for authorization in any other service.

(f) Demonstration of equipment to prospective purchasers by persons or state and local governmental subdivisions engaged in the business of selling radio equipment.

(g) Testing of equipment in connection with production or regulatory approval of such equipment.

(h) Development of radio technique, equipment or engineering data not

related to an existing or proposed service, including field or factory testing or calibration of equipment.

(i) Development of radio technique, equipment, operational data or engineering data related to an existing or proposed radio service.

(j) Limited market studies.

(k) Types of experiments that are not specifically covered under paragraphs (a) through (j) of this section will be considered upon demonstration of need for such additional types of experiments.

§ 5.5 Definition of terms.

For the purpose of this part, the following definitions shall be applicable. For other definitions, refer to part 2 of this chapter (Frequency Allocations and Radio Treaty Matters; General Rules and Regulations).

Authorized frequency. The frequency assigned to a station by the Commission and specified in the instrument of authorization.

Authorized power. The power assigned to a radio station by the Commission and specified in the instrument of authorization.

Experimental radio service. A service in which radio waves are employed for purposes of experimentation in the radio art or for purposes of providing essential communications for research projects that could not be conducted without the benefit of such communications.

Experimental station. A station utilizing radio waves in experiments with a view to the development of science or technique.

Fixed service. A radiocommunication service between specified fixed points.

Fixed station. A station in the fixed service.

Harmful interference. Any radiation or induction that endangers the functioning of a radionavigation or safety service, or obstructs or repeatedly interrupts a radio service operating in accordance with the Table of Frequency Allocations and other provisions of part 2 of this chapter.

Landing area. As defined by 49 U.S.C. 40102(a)(28) of the Civil Aeronautics Act of 1938, as amended, any locality, either of land or water, including airdromes and intermediate landing fields, that is used, or intended to be used, for the landing and take-off of aircraft, whether or not facilities are provided for the shelter, servicing, or repair of aircraft, or for receiving or discharging passengers or cargo.

Land station. A station in the mobile service not intended for operation while in motion.

Mobile service. A radiocommunication service between mobile and land stations, or between mobile stations.

Mobile station. A station in a mobile service intended to be used while in motion or during halts at unspecified points.

Person. An individual, partnership, association, joint stock company, trust, or corporation.

Public correspondence. Any telecommunication that offices and stations, by reason of their being at the disposal of the public, must accept for transmission.

Radio service. An administrative subdivision of the field of radiocommunication. In an engineering sense, the subdivisions may be made according to the method of operation, as, for example, mobile service and fixed service. In a regulatory sense, the subdivisions may be descriptive of particular groups of licensees, as, for example, the groups of persons licensed under this part.

Station authorization. Any license or special temporary authorization issued by the Commission.

Subpart B—Applications and Licenses

§ 5.51 Eligibility of license.

(a) Authorizations for stations in the Experimental Radio Service will be issued only to persons qualified to conduct experimentation utilizing radio waves for scientific or technical operation data directly related to a use of radio not provided by existing rules; or for communications in connection with research projects when existing communications facilities are inadequate.

(b) Applicants eligible for authorizations in an established service, and seeking to develop operational data or techniques directed toward the improvement or extension of that service shall file applications and conduct such projects under the developmental rules of the established service.

(c) A station license shall not be granted to or held by a foreign government or a representative thereof.

§ 5.53 Station authorization required.

(a) No radio transmitter shall be operated in the Experimental Radio Service except under and in accordance with a proper station authorization granted by the Commission. However, construction of proposed experimental satellite facilities may begin prior to Commission grant of an authorization. Such construction will be entirely at the applicant's risk and will not entitle the applicant to any assurances that its proposed experiment will be subsequently approved or regular services subsequently authorized. Additionally, the applicant must notify the Commission's Office of Engineering and Technology in writing that it plans to begin construction at its own risk.

(b) Persons desiring to install and operate radio transmitting equipment under this part should first submit an application for a radio station license in accordance with § 5.59 of this part.

(c) If installation and/or operation of the equipment may significantly impact the environment, see § 1.1307 of this chapter, an environmental assessment as defined in § 1.1311 of this chapter must be submitted with the application.

§ 5.55 Filing of applications.

(a) To assure that necessary information is supplied in a consistent manner by all persons, standard forms are prescribed for use in connection with the majority of applications and reports submitted for Commission consideration. Standard numbered forms applicable to the Experimental Radio Service are discussed in § 5.59 of this part, and may be obtained by calling the FCC FORMS hotline, (202) 418–FORM. If no standard form is applicable, the informal application procedure outlined in § 5.59(f) of this part should be followed.

(b) Any application for radio station authorization and all correspondence relating thereto shall be submitted to the Commission's Office of Engineering and Technology, Washington, DC 20554. (Applications requiring fees as set forth in part 1, subpart G of this chapter must be filed in accordance with § 0.401(b) of this chapter.

(c) Each application for station authorization shall be specific and complete with regard to station location, proposed equipment, power, antenna height, and operating frequency; and other information required by the application form and this part.

(d) Applications involving temporary operation: When an experimental program is expected to last no more than six months, its operation shall be considered temporary and the special temporary authorization procedure outlined in § 5.61 of this part shall apply.

§ 5.57 Who may sign applications.

(a) Except as provided in paragraph (b) of this section, applications, amendments thereto, and related statements of fact required by the Commission shall be personally signed by the applicant, if the applicant is an individual; by one of the partners, if the applicant is a partnership; by an officer or duly authorized employee, if the

applicant is a corporation; or by a member who is an officer, if the applicant is an unincorporated association. Applications, amendments, and related statements of fact filed on behalf of eligible government entities, such as states and territories of the United States and political subdivisions thereof, the District of Columbia, and units of local government, including incorporated municipalities, shall be signed by such duly elected or appointed officials as may be competent to do so under the laws of the applicable jurisdiction.

(b) Applications, amendments thereto, and related statements of fact required by the Commission may be signed by the applicant's attorney in case of the applicant's physical disability or of his/her absence from the United States. The attorney shall in that event separately set forth the reason why the application is not signed by the applicant. In addition, if any matter is stated on the basis of the attorney's belief only (rather than his/her knowledge), he/she shall separately set forth reasons for believing that such statements are true.

(c) Only the original of applications, amendments, or related statements of fact need be signed; copies may be conformed.

(d) Applications, amendments, and related statements of fact need not be submitted under oath. Willful false statements made therein, however, are punishable by fine and imprisonment, U.S. Code, title 18, Sec. 1001, and by appropriate administrative sanctions, including revocation of station license pursuant to sec. 312(a)(1) of the Communications Act of 1934, as amended.

(e) ''Signed,'' as used in this section, means an original handwritten signature; however, the Office of Engineering and Technology may allow signature by any symbol executed or adopted by the applicant with the intent that such symbol be a signature, including symbols formed by computer-generated electronic impulses.

§ 5.59 Forms to be used.

(a) *Application for experimental radio license.* Entities requesting an experimental authorization must submit FCC Form 442 (application). A single FCC Form 442 may be used for several radio components of an experimental program, however, unrelated experimental programs should be filed on separate applications.

(b) *Application for modification of experimental license.* An application for modification of experimental authorization shall be submitted on FCC Form 442. A blanket application may be submitted for modification of a group of authorizations of the same class as long as the scope of the modifications are specified in the application. The individual authorizations covered by such an application shall be clearly identified therein. However, application for modification to change location of an experimental authorization shall be filed as a separate application.

(c) *Application for renewal of experimental authorization.* Application for renewal of station license shall be submitted on FCC Form 405. A blanket application may be submitted for renewal of a group of station licenses in the same class in those cases in which the renewal requested is in exact accordance with the terms of the existing authorizations. The individual stations covered by such applications shall be clearly identified thereon. Unless otherwise directed by the Commission, each application for renewal of license shall be filed at least 60 days prior to the expiration date of the license to be renewed.

(d) *Application for consent to assign an experimental authorization.* Application on FCC Form 702 shall be submitted when the legal right to construct or to control the use and operation of a station is to be transferred as a result of a voluntary act (contract or other agreement) or an involuntary act (death or legal disability) of the grantee of a station authorization or by involuntary assignment of the physical property constituting the station under a court decree in bankruptcy proceedings, or other court order, or by operation of law in any other manner. Such application must be accompanied by the FCC Form 442 of which only the certification need be signed by the proposed assignee. No other information is required to be submitted on this form.

(e) *Application for consent to transfer control of Corporation holding experimental authorization.* Application for consent to transfer control shall be submitted on FCC Form 703 whenever it is proposed to change the control of a corporation holding a station authorization.

(f) *Informal application.* (1) An application not submitted on a standard form prescribed by the Commission is considered to be an informal application. Each informal application shall be submitted normally in letter form, and with the original signed in accordance with § 5.57 of this part. Each application shall be clear and complete within itself as to the facts presented and the action desired.

(2) An informal application for authority to operate transmitting equipment will be accepted only under the conditions set forth for special temporary authorizations in § 5.61 of this part.

§ 5.61 Procedure for obtaining a special temporary authorization.

(a) The Commission may issue a special temporary authorization under this part in cases in which a need is shown for operation of a station for six months or less, provided such operation is not in conflict with the Commission's rules in this part. In cases in which an applicant sets forth compelling reasons why a special temporary authorization must be granted expeditiously, preference will be given to processing the application.

(b) Extensions of a special temporary authorization will be granted provided that an application for a regular experimental license has been filed at least 15 days prior to the expiration of the licensee's temporary authority. When such an application is timely filed, operations may continue in accordance with the other terms and conditions of the temporary authority pending disposition of the application, unless the applicant is notified otherwise by the Commission.

(c) An application for special temporary authorization may be filed as an informal application in the manner prescribed by § 5.59(f) of this part and shall contain the following information:

(1) Name, address, phone number (also e-mail address and facsimile number, if available) of the applicant.

(2) Description of why an STA is needed.

(3) Description of the operation to be conducted and its purpose.

(4) Time and dates of proposed operation.

(5) Class(es) of station (fixed, mobile, fixed and mobile) and call sign of station (if applicable).

(6) Description of the location(s) and geographical coordinates of the proposed operation. Indication of which coordinate datum (NAD–27 or NAD–83) applies.

(7) Equipment to be used, including name of manufacturer, model and number of units.

(8) Frequency(ies) desired.

(9) Maximum effective radiated power (ERP).

(10) Emission designator (see § 2.201 of this chapter) or describe emission (bandwidth, modulation, etc.)

(11) Overall height of antenna structure above the ground (if greater than 6 meters above the ground or an existing structure, see Part 17 of this Chapter concerning notification to the FAA).

§ 5.63 Supplementary statements required.

(a) Each applicant for an authorization in the Experimental Radio Service must enclose with the application a narrative statement describing in detail the program of research and experimentation proposed, the specific objectives sought to be accomplished; and how the program of experimentation has a reasonable promise of contribution to the development, extension, or expansion, or utilization of the radio art, or is along lines not already investigated. An applicant may request non-disclosure of proprietary information submitted under this part. These requests should follow the procedures for submission set forth in § 0.459 of this chapter.

(b) If the authorization is to be used for the purpose of fulfilling the requirements of a contract with an agency of the United States Government, the applicant shall submit a narrative statement describing the project, the name of the contracting agency, and the contract number.

(c) If the authorization is to be used for the sole purpose of developing equipment for exportation to be employed by stations under the jurisdiction of a foreign government, the applicant shall submit a narrative statement describing the project, any associated contract number, and the name of the foreign government concerned.

(d) The provisions of paragraph (a) of this section shall not be applicable to applications for an authorization in the Experimental Radio Service to be used for communications essential to a research project in which other means of communications are inadequate or not available. In such cases, applicants shall include as part of the application for an authorization the following:

(1) A description of the nature of the research project being conducted.

(2) A showing that communications facilities are necessary for the research project involved.

(3) A showing that existing communications facilities are inadequate or unavailable.

§ 5.65 Defective applications.

(a) Applications that are defective with respect to completeness of answers to required questions, execution or other matters of a purely formal character may not be received for filing by the Commission, and may be returned to the applicant with a brief statement as to the omissions.

(b) If an applicant is requested by the Commission to file any documents or information not included in the prescribed application form, a failure to comply with such request will constitute a defect in the application.

(c) Applications that are not in accordance with the Commission's rules, regulations, or other requirements will be considered defective unless accompanied either by:

(1) a petition to amend any rule, regulation, or requirement with which the application is in conflict; or

(2) a request of the applicant for waiver of, or an exception to, any rule, regulation, or requirement with which the application is in conflict. Such request shall show the nature of the waiver or exception desired and set forth the reasons in support thereof.

§ 5.67 Amendment or dismissal of applications.

(a) Any application may be amended or dismissed without prejudice upon request of the applicant prior to the time the application is granted. Each amendment to, or request for dismissal of an application shall be signed, authenticated, and submitted in the same manner and with the same number of copies as required for the original application. All subsequent correspondence or other material that the applicant desires to have incorporated as a part of an application already filed shall be submitted in the form of an amendment to the application.

(b) Failure to prosecute an application, or failure to respond to official correspondence or request for additional information, will be cause for dismissal. Such dismissal will be without prejudice.

§ 5.69 Partial grants.

In cases in which the Commission grants an application in part, or with any privileges, terms, or conditions other than those requested, or subject to any interference that may result to a station if designated application or applications are subsequently granted, the action of the Commission shall be considered as a grant of such application unless the applicant shall, within 30 days from the date on which such grant is made or from its effective date if a later date is specified, file with the Commission a written request rejecting the grant as made. Upon receipt of such request, the Commission will coordinate with the applicant in an attempt to resolve problems arising from the grant.

§ 5.71 License period.

(a) The regular license period for stations in the Experimental Radio Service is either 2 or 5 years. An applicant desiring to apply for a 5-year license must provide justification for its need for a license of that duration. A license may be renewed upon an adequate showing of need.

(b) A license will not be granted for a period longer than that which is required for completion of the experimental project. If such period is estimated to be less than 2 years, or between 2–5 years, a statement to that effect by the applicant may facilitate grant of the application. See also § 5.69 of this part.

§ 5.73 Experimental report.

(a) Unless specifically stated as a condition of the authorization, licensees are not required to file a report on the results of the experimental program carried on under this subpart.

(b) The Commission may, as a condition of authorization, request the licensee to forward periodic reports in order to evaluate the progress of the experimental program.

(c) An applicant may request that the Commission withhold from the public certain reports and associated material and the Commission will do so unless the public interest requires otherwise. These requests should follow the procedures for submission set forth in § 0.459 of this chapter.

§ 5.75 Number of licenses required.

An application for a station embracing widely divergent and unrelated experimentations will normally require a separate license for each experiment. However, if the experiments are related or conducted by the same manufacturer, an applicant may apply for a blanket license encompassing the entire experimental program. If a blanket license is granted, licensees will be required to notify the Commission of the specific details of each individual experiment, including location, number of base and mobile units, power, emission designator, and any other pertinent technical information not specified by the blanket license.

§ 5.77 Change in equipment and emission characteristics.

(a) A change may be made in a licensed transmitter without specific authorization from the Commission provided that the change does not result in operations inconsistent with any term of the outstanding authorization for the station involved.

(b) Discrete changes in emission characteristics may be made without specific authorization from the Commission provided that the Commission is given written notification demonstrating that such changes will not exceed the maximum

emissions envelope established in the existing authorization. Changes made pursuant to such notification that become a permanent part of the licensee's experimental program must be listed in the licensee's next application for renewal.

(c) Prior authorization from the Commission is required before the following antenna changes may be made at a station at a fixed location:

(1) Any change that will either increase the height of a structure supporting the radiating portion of the antenna or decrease the height of a lighted antenna structure.

(2) Any change in the location of an antenna when such relocation involves a change in the geographic coordinates of latitude or longitude by as much as one second, or when such relocation involves a change in street address.

§ 5.79 Transfer and assignment of station authorization.

A station authorization, the frequencies authorized to be used by the grantee of such authorization, and the rights therein granted by such authorization shall not be transferred, assigned, or in any manner either voluntarily or involuntarily disposed of, unless the Commission shall, after securing full information, decide that such a transfer is in the public interest and give its consent in writing. Requests for authority to transfer or assign a station authorization shall be submitted on the forms prescribed by § 5.59 of this part.

§ 5.81 Discontinuance of station operation.

In case of permanent discontinuance of operation of a fixed or land station in the Experimental Radio Service, or in case of permanent discontinuance of operation of all transmitter units listed in the license for a mobile station in the Experimental Radio Service, the licensee shall forward the station license to the Commission's Office of Engineering and Technology for cancellation.

§ 5.83 Cancellation provisions.

The applicant for a station in the Experimental Radio Services accepts the license with the express understanding: (a) that the authority to use the frequency or frequencies assigned is granted upon an experimental basis only and does not confer any right to conduct an activity of a continuing nature; and

(b) that said grant is subject to change or cancellation by the Commission at any time without hearing if in its discretion the need for such action arises. However, a petition for reconsideration or application for review may be filed to such Commission action.

§ 5.85 Frequencies and policy governing their assignment.

(a) Stations operating in the Experimental Radio Service may be authorized to use any government or non-government frequency designated in the Table of Frequency Allocations set forth in part 2 of this chapter, provided that the need for the frequency requested is fully justified by the applicant.

(b) Each frequency or band of frequencies available for assignment to stations in the Experimental Radio Service is available on a shared basis only, and will not be assigned for the exclusive use of any one applicant, and such use may also be restricted to one or more specified geographical areas. Not more than one frequency in a band of frequencies will normally be assigned for the use of a single applicant unless a showing is made demonstrating that need for the assignment of additional frequencies is essential to the proposed program of experimentation.

(c) Frequency assignments will be made only on the condition that harmful interference will not be caused to any station operating in accordance with the Table of Frequency Allocation of part 2 of this chapter.

(d) *Use of Public Safety Frequencies.* Applicants in the Experimental Radio Service must avoid use of public safety frequencies except when a compelling showing can be made that use of such frequencies is in the public interest. Public safety frequencies are identified in subpart B (Public Safety Radio Services) and subpart C (Special Emergency Radio Service) of part 90 of this Chapter. In addition, subpart S of part 90 of this chapter contains rules for the assignment of frequencies that may be used by Public Safety Radio Services in the 806–824 MHz and 851–869 MHz bands. If an experimental license to use public safety radio frequencies is granted, the authorization will be conditioned to require coordination between the experimental licensee and the appropriate frequency coordinator and/or all of the public safety licensees in its intended area of operation.

(e) The Commission may, at its discretion, condition any experimental license or STA on the requirement that before commencing operation, the new licensee coordinate its proposed facility with other licensees that may receive interference as a result of the new licensee's operations.

(f) *Protection of FCC monitoring stations.* (1) Applicants are advised to give consideration, prior to filing applications, to the need to protect FCC monitoring stations from harmful interference. Geographical coordinates of such stations are listed in § 0.121(b) of this chapter. Applications for stations (except mobile stations) that will produce on any frequency a direct wave fundamental field strength of greater than 10 mV/m in the authorized bandwidth of service (–65.8 dBW/m^2 power flux density assuming a free space characteristic impedance of 120π ohms) at the referenced coordinates, may be examined to determine the extent of possible interference. Depending on the theoretical field strength value or other ambient radio field signal levels at the indicated coordinates, a clause protecting the monitoring station may be added to the station authorization.

(2) In the event that calculated value of expected field strength exceeds 10 mV/m (–65.8 dBW/m^2) at the reference coordinates, or if there is any question whether field strength levels might exceed the threshold value, advance consultation with the FCC to discuss any protection necessary should be considered. Prospective applicants may communicate with the Technology Division, Compliance and Information Bureau, telephone (202) 418–1210, Federal Communications Commission, Washington, DC 20554.

(3) Advance consultation is suggested particularly for those applicants who have no reliable data that indicates whether the field strength or power flux density figure indicated would be exceeded by their proposed radio facilities (except mobile stations). In such instances, the following is a suggested guide for determining whether an applicant should coordinate:

(i) All stations within 2.4 kilometers (1.5 statute miles);

(ii) Stations within 4.8 kilometers (3 statute miles) with 50 watts or more average ERP in the primary plane of polarization in the azimuthal direction of the Monitoring Station;

(iii) Stations within 16 kilometers (10 statute miles) with 1 kW or more average ERP in the primary plane of polarization in the azimuthal direction of the Monitoring Station;

(iv) Stations within 80 kilometers (50 statute miles) with 25 kW or more average ERP in the primary plane of polarization in the azimuthal direction of the Monitoring Station.

(4) Advance coordination for stations operating above 1000 MHz is recommended only where the proposed station is in the vicinity of a monitoring station designated as a satellite monitoring facility in § 0.121(c) of this

Chapter and also meets the criteria outlined in paragraphs (d) (2) and (3) of this section.

(5) The Commission will not screen applications to determine whether advance consultation has taken place. However, applicants are advised that such consultation can avoid objections from the Commission.

§ 5.87 Frequencies for field strength surveys or equipment demonstrations.

(a) Authorizations issued under §§ 5.3 (e) and (f) of this part will normally not have specific frequencies designated in a station license. Prior to the commencement of a survey or demonstration, the licensee will request a specific frequency assignment and submit the following information:

(1) Time, date and duration of survey.

(2) Frequency to be used.

(3) Location of transmitter and geographical area to be covered.

(4) Purpose of survey.

(5) Method and equipment to be used.

(6) Names and addresses of persons for whom the survey is conducted.

(b) [Reserved]

§ 5.89 School and student authorizations.

The Commission may issue an authorization to schools or students for the purpose of presenting experiments or technical demonstrations for school or school approved projects that require the use of radio for a limited period of time. Such authorizations may be granted at the discretion of the Commission.

(a) An application for a school or student authorization may be filed in letter form and must comply with the provisions of § 5.63, of this part except where specified below. The application must be accompanied by a signed statement from a member of faculty of the school, on appropriate letterhead, indicating the person under whose general supervision the project will be conducted. In the case of student authorizations, the letter must state that the project has the approval of the school.

(b) Frequencies in the following bands are available for assignment in authorizations issued under this section:

27.23–27.28 MHz.
460–461 MHz.
462.525–467.475 MHz.
2402–2483.5 MHz.
10.00–10.50 GHz.

(c) Operations under this section shall not exceed a peak envelope output power of 4 watts. The Commission may authorize a greater power if a satisfactory showing is made that such greater power is necessary and that appropriate measures will be taken to prevent interference.

(d) The frequency of operation must be measured or checked prior to each time of operation.

(e) Subject to the provisions of (b), (c) and (d), the provisions in subpart C of this part are waived insofar as such provisions require a station authorized under this section to observe the technical and operating restrictions set forth therein.

(f) The licensee holding an authorization issued under this section shall maintain a record of operation containing the following information:

(1) A brief description of the experimentation being conducted.

(2) The date and time of each period of operation.

(3) The frequency of operation as measured or checked at the beginning of each period of operation.

(g) The record of operation shall be retained for one month after the termination of the authorization.

§ 5.91 Notification of the National Radio Astronomy Observatory.

In order to minimize possible harmful interference at the National Radio Astronomy Observatory site located at Green Bank, Pocahontas County, West Virginia, and at the Naval Radio Research Observatory site at Sugar Grove, Pendleton County, West Virginia, any applicant for a station authorization other than mobile, temporary base, temporary fixed, Personal Radio, Civil Air Patrol, or Amateur seeking a station license for a new station, or a construction permit to construct a new station or to modify an existing station license in a manner that would change either the frequency, power, antenna height or directivity, or location of such a station within the area bounded by 39 deg. 15′ N on the north, 78 deg. 30′ W on the east, 37 deg. 30′ N on the south and 80 deg. 30′ W on the west shall, at the time of filing such application with the Commission, simultaneously notify the Director, National Radio Astronomy Observatory, P.O. Box NZ2, Green Bank, West Virginia, 24944, in writing, of the technical particulars of the proposed station. Such notification shall include the geographical coordinates of the antenna, antenna height, antenna directivity if any, frequency, type of emission, and power. In addition, the applicant shall indicate in its application to the Commission the date notification was made to the Observatory. After receipt of such applications, the Commission will allow a period of twenty (20) days for comments or objections in response to the notifications indicated. If an objection to the proposed operation is received during the twenty-day period from the National Radio Astronomy Observatory for itself or on behalf of the Naval Radio Research Observatory, the Commission will consider all aspects of the problem and take whatever action is deemed appropriate.

§ 5.93 Limited market studies.

Unless otherwise stated in the instrument of authorization, licenses granted for the purpose of limited market studies pursuant to § 5.3(j) of this part are subject to the following conditions:

(a) All transmitting and/or receiving equipment used in the study shall be owned by the licensee.

(b) The licensee is responsible for informing anyone participating in the experiment that the service or device is granted under an experimental authorization and is strictly temporary.

(c) The size and scope of the experiment are subject to limitations as the Commission shall establish on a case-by-case basis. If the Commission subsequently determines that a market study is not so limited, the study shall be immediately terminated.

Subpart C— Technical Standards and Operating Requirements

§ 5.101 Frequency stability.

An applicant must propose to use a frequency tolerance that would confine emissions within the band of operation, unless permission is granted to use a greater frequency tolerance. Equipment is presumed to operate over the temperature range −20 to +50 degrees celsius with an input voltage variation of 85% to 115% of rated input voltage, unless justification is presented to demonstrate otherwise.

§ 5.103 Types of emission.

Stations in the Experimental Radio Service may be authorized to use any of the classifications of emissions covered in part 2 of this chapter.

§ 5.105 Authorized bandwidth.

Each authorization issued to a station operating in this service will show, as the prefix to the emission classification, a figure specifying the maximum necessary bandwidth in kilohertz for the emission used. The authorized bandwidth is considered to be the occupied or necessary bandwidth, whichever is greater. This bandwidth should be determined in accordance with § 2.202 of this chapter.

§ 5.107 Transmitter control requirements.

Each licensee shall be responsible for maintaining control of the transmitter authorized under its station authorization. This includes both

ensuring that transmissions are in conformance with the operating characteristics prescribed in the station authorization and that the station is operated only by persons duly authorized by the licensee.

§ 5.109 Antenna and tower requirements.

(a) Applicants with fixed stations that use antennas that exceed 6 meters in height above the ground level or more than 6 meters in height above an existing building must comply with the requirements of part 17 of this chapter.

(b) The licensee of any radio station that has an antenna structure required to be painted and illuminated pursuant to the provisions of section 303(q) of the Communications Act of 1934, as amended, and part 17 of this chapter, shall perform the inspections and maintain the tower marking and lighting, and associated control equipment, in accordance with the requirements of §§ 17.43 through 17.57 of this chapter.

§ 5.111 General limitations on use.

(a) The following transmission limitations are applicable to all classes of stations in the Experimental Radio Service:

(1) Stations may make only such transmissions as are necessary and directly related to the conduct of the licensee's stated program of experimentation as specified in the application for license and the related station instrument of authorization, and as governed by the provisions of the rules and regulations contained in this part. All transmissions shall be limited to the minimum practical transmission time.

(2) When transmitting, the licensee must use every precaution to ensure that the radio frequency energy emitted will not cause harmful interference to the services carried on by stations operating in accordance with the Table of Frequency Allocations of part 2 of this chapter and, further, that the power radiated is reduced to the lowest practical value consistent with the program of experimentation for which the station authorization is granted. If harmful interference to an established radio service develops, the licensee shall cease transmissions and such transmissions shall not be resumed until it is certain that harmful interference will not be caused.

(b) If experimental stations are to be used to retransmit signals of any other station or to render any communications service to third parties, a full disclosure of this must be made in the application for license.

§ 5.113 Adherence to program of research.

(a) The program of experimentation as stated by an applicant in its application for license or in the station instrument of authorization, shall be substantially adhered to unless the licensee is authorized to do otherwise by the Commission.

(b) Where some phases of the experimental program are not covered by the general rules of the Commission or by the rules of this part, the Commission may specify supplemental or additional requirements or conditions in each case as deemed necessary in the public interest, convenience, or necessity.

§ 5.115 Station identification.

Each class of station in the experimental services shall, unless specifically exempted by the terms of the station authorization, transmit its assigned call sign at the end of each complete transmission: Provided, however, that the transmission of the call sign at the end of each transmission is not required for projects requiring continuous, frequent, or extended use of the transmitting apparatus, if, during such periods and in connection with such use, the call sign is transmitted at least once every thirty minutes. The station identification shall be transmitted in clear voice or Morse code. All digital encoding and digital modulation shall be disabled during station identification.

§ 5.117 Suspension of transmission required.

The radiations of the transmitter shall be suspended immediately upon detection or notification of a deviation from the technical requirements of the station authorization until such deviation is corrected, except for transmissions concerning the immediate safety of life or property, in which case the transmissions shall be suspended as soon as the emergency is terminated.

§ 5.119 Posting station licenses.

The current original authorization for each station shall be retained as a permanent part of the station records but need not be posted.

§ 5.121 Retention of station records.

Records required to be kept by this part shall be retained for a period of at least one year.

§ 5.123 Inspection of stations.

All stations and records of stations in the Experimental Radio Service shall be made available for inspection at any time while the station is in operation or shall be made available for inspection upon reasonable request of an authorized representative of the Commission.

§ 5.125 Authorized points of communication.

Generally, stations in the Experimental Radio Service may communicate only with other stations licensed in the Experimental Radio Service. Nevertheless, upon a satisfactory showing that the proposed communications are essential to the conduct of the research project, authority may be granted to communicate with stations in other services and U.S. Government stations.

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

3. The authority citation for part 90 continues to read as follows:

Authority: Secs. 4, 251–2, 303, 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 251–2, 303, 309 and 332, unless otherwise noted.

4. Section 90.203 is amended by revising paragraph (a) introductory text and by adding a new paragraph (l), to read as follows:

§ 90.203 Type acceptance required.

(a) Except as specified in paragraphs (b) and (k) of this section, each transmitter utilized for operation under this part and each transmitter marketed as set forth in § 2.803 of part 2 of this chapter must be of a type that is included in the Commission's current Radio Equipment List as type accepted for use under this part; or, be of a type that has been type accepted by the Commission for use under this part in accordance with the procedures in paragraph (a)(2) of this section.

* * * * *

(l) Ocean buoy and wildlife tracking transmitters operating in the band 40.66–40.70 MHz or 216–220 MHz under the provisions of § 90.248 of this part shall be authorized under the notification procedure pursuant to subpart J of part 2 of this chapter.

5. A new § 90.248 is added to read as follows:

§ 90.248 Wildlife and ocean buoy tracking.

(a) The frequency bands 40.66–40.70 MHz and 216–220 MHz may be used for the tracking of, and the telemetry of scientific data from, ocean buoys and animal wildlife.

(b) Transmitters operating under the provisions of this section are not subject to the technical standards contained in §§ 90.205–90.217. In lieu thereof, the transmitters shall comply with the provisions in this section.

(c) Classes of emission are limited to N0N, A1A, A2A, A2B, F1B, J2B, F2A, F2B, and/or F8E.

(d) The authorized bandwidth shall not exceed 1 kHz.

(e) *Frequency stability.* (1) For transmitters operating in the 40.66–40.70 MHz frequency band, the frequency stability shall be sufficient to ensure that, at the carrier frequency employed, the sum of the authorized bandwidth plus the bandwidth required for frequency stability are confined within this band.

(2) In the 216–220 MHz frequency band, transmitters shall employ a minimum frequency stability of 0.005 percent (50 parts per million). The carrier frequency shall be selected to ensure that the sum of the authorized bandwidth plus the bandwidth required for frequency stability are confined within this band.

(3) The frequency stability standards shall be met over a temperature range of −30° to +50° centigrade at normal supply voltage and for a variation in the primary supply voltage from 85% to 115% of the rated supply voltage at a temperature of +20° C. For battery operated equipment, the equipment tests shall be performed using a new battery.

(f) The maximum peak transmitter output (carrier) power shall not exceed 1 milliwatt for airborne wildlife applications, 10 milliwatts for terrestrial wildlife applications or 100 milliwatts for ocean buoys.

(g) Emissions appearing outside of the authorized bandwidth shall be attenuated below the carrier power by at least 26 dB, following the procedures specified in § 90.210(m).

6. Section 90.259 is revised to read as follows:

§ 90.259 Assignment and use of frequencies in the bands 216–220 MHz and 1427–1435 MHz.

Frequencies in the bands 216–220 MHz and 1427–1435 MHz may be assigned to applicants under this part provided the bands are listed in the individual radio service under which they establish eligibility. Use of these bands is limited to telemetering purposes, except that the 216–220 MHz band may also be used for wildlife and ocean buoy tracking operations pursuant to § 90.248. All operation is secondary to Federal Government operations, and operation in the 216–220 MHz band is also secondary to the maritime mobile service and operation in the 1427–1429 MHz band is also secondary to the space operation service (earth-to-space). Base stations authorized in these bands shall be used to perform telecommand functions with associated mobile telemetering stations. Base stations may also command actions by the vehicle itself, but will not be authorized solely to perform this function. Airborne use will not be authorized. Each application will be coordinated with the Federal Government by the Federal Communications Commission and is subject to such technical and operational limitations as may be imposed by the government. Each application should include precise information concerning emission characteristics, transmitter frequency deviation, output power, type and directional characteristics, if any, of the antenna, and the minimum necessary hours of operation.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

[Docket No.971229312–7312–01; I.D. 111398A]

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Trip Limit Revisions

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

ACTION: Fishing restrictions; request for comments.

SUMMARY: NMFS announces an increase to the monthly cumulative trip limit for Dover sole taken in the limited entry Pacific Coast groundfish fishery. This change is intended to ensure that the 1998 harvest guidelines and allocations are taken. NMFS also announces the last cumulative trip limit period in 1998 for the ''B'' platoon, those limited entry trawl vessels that are authorized to take their cumulative trip limits 2 weeks out of phase with the rest of the fleet, and makes several housekeeping changes. These actions are authorized under the Pacific Coast Groundfish Fishery Management Plan (FMP).

DATES: Effective 0001 hours local time (l.t.) December 1, 1998, except for the trip limits for vessels operating in the ''B'' platoon, whose trip limit changes will become effective at 0001 hours l.t. November 16, 1998. These changes are in effect, unless modified, superseded, or rescinded, until the effective date of the 1999 annual specifications and management measures for the Pacific Coast groundfish fishery, which will be published in the **Federal Register**. Comments will be accepted through December 4, 1998.

ADDRESSES: Submit comments to William Stelle, Jr., Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115–0070; or William Hogarth, Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: William L. Robinson, Northwest Region, NMFS, 206–526–6140; or Svein Fougner, Southwest Region, NMFS, 562–980–4040.

SUPPLEMENTARY INFORMATION: The following trip limit change was recommended by the Pacific Fishery Management Council (Council), in consultation with the States of Washington, Oregon, and California, at its November 2–6, 1998, meeting in Portland, OR.

Increase to the Limited Entry Monthly Cumulative Trip Limit for Dover Sole

Preliminary landing estimates for Dover sole, which is within the DTS complex, consisting of Dover sole, thornyheads, and trawl-caught sablefish, indicate that the limited entry allocation would not be reached. The current monthly cumulative trip limits for the limited entry fishery for species in the DTS complex are: Dover sole, 18,000 lb (8,165 kg); longspine thornyheads, 7,500 lb (3,402 kg); shortspine thornyheads, 1,500 lb (680 kg), and trawl-caught sablefish, 5,000 lb (2,268 kg).

The best available information at the November 1998 Council meeting indicated that 1,390 mt of trawl-caught sablefish, 5,543 mt of Dover sole, 1,671 mt of longspine thornyheads, and 941 mt of shortspine thornyheads had been taken through September 30, 1998. The Dover sole landing levels for January through September are well below the levels that were projected for this period. Although the estimated attainment date for the shortspine thornyhead allocation is December 20, relatively little bycatch is expected to be taken in the Dover sole fishery during winter months, so increasing the Dover sole trip limit is not expected to result in increased bycatch and discard of shortspine thornyheads. Therefore, the Council recommended increasing the monthly cumulative trip limit of Dover sole on December 1, 1998, to 36,000 lb (16,329 kg). Longspine thornyheads and

trawl-caught sablefish also are projected to be below their limited entry allocations, but increases to their trip limits were not recommended because of expected bycatch of shortspine thornyheads.

Final Period for the ''B'' Platoon

NMFS also announces the last cumulative trip limit period in 1998 for the ''B'' platoon, those limited entry trawl vessels authorized (on their limited entry permit) to take their cumulative trip limits 2 weeks out of phase with the rest of the fleet. For vessels in the ''B'' platoon, the final cumulative trip limit period will be from November 16, 1998, through December 31, 1998. At any time during this period, each vessel in the ''B'' platoon is allowed to take and retain, possess, and land the equivalent of two 1-month cumulative limits (the November and December cumulative trip limits). Therefore, the ''B'' platoon cumulative trip limit for Dover sole between November 16 and December 31, 1998, is 54,000 lb (24,494 kg), which is derived by adding 18,000 lb (8,165 kg), the amount of the November cumulative trip limit, plus 36,000 lb (16,329 kg), the amount of the December cumulative trip limit.

Housekeeping

This document also updates portions of the 1998 annual specifications and management measures (63 FR 419, January 6, 1998), as amended. In Section IV., under *C. Trip Limits in the Open Access Fishery*, the introductory text at (1)(a) is deleted because it was replaced by paragraphs (1)(a)(i) and (ii) on October 1, 1998 (63 FR 53313, October 5, 1998). Also, paragraphs C(1)(a)(ii) and C(2)(a) are revised to include longline gear which was inadvertently deleted. These changes clarify the Council's intent.

NMFS Action

For the reasons stated above, NMFS concurs with the Council's recommendations and announces the following changes to the 1998 annual management measures (63 FR 419, January 6, 1998, as amended at 63 FR 24970, May 6, 1998; 63 FR 36612, July 7, 1998; and 63 FR 45966, August 28, 1998, 63 FR 53313, October 5, 1998).

1. In Section IV., under *A. General Definitions and Provisions*, paragraph (1)(c)(iii)(C) is revised to read as follows:

A. General Definitions and Provisions

* * * * *

(1) * * *

(c) * * *

(iii) * * *

(C) Special provisions will be made for ''B'' platoon vessels so that the amount of fish made available in 1998 to both ''A'' and ''B'' vessels is the same. For vessels in the ''B'' platoon, the final cumulative trip limit period will be from November 16, 1998, through December 31, 1998. At any time during this period, each vessel in the ''B'' platoon is allowed to take and retain, possess, and land the equivalent of two 1-month cumulative limits which is the sum of the cumulative trip limits for November and December 1998.

* * * * *

2. In Section IV., under *B. Limited Entry Fishery*, (4)(c)(i) is revised to read as follows:

B. Limited Entry Fishery

* * * * *

(4) * * *

(c) * * *

(i) The monthly cumulative trip limits for species in the Dover sole, thornyhead, and trawl-caught sablefish complex are: for Dover sole, 36,000 lb (16,329 kg); for longspine thornyheads, 7,500 lb (3,402 kg); for shortspine thornyheads, 1,500 lb (680 kg); and for trawl-caught sablefish, 5,000 lb (2,268 kg). For vessels in the ''B'' platoon, during November 16-December 31, 1998, the cumulative trip limit for Dover sole is 54,000 lb (24,494 kg); for longspine thornyheads, 15,000 lb (6,804 kg); for shortspine thornyheads, 3,000 lb (1361 kg); and for trawl-caught sablefish, 10,000 lb (4,536 kg).

* * * * *

3. In Section IV., under *C. Trip Limits in the Open Access Fishery*, paragraph (1)(a) is revised, paragraph (1)(e)(ii)(A) is revised, and the heading of paragraph (2)(a) is revised to read as follows:

C. Trip Limits in the Open Access Fishery

* * * * *

(1) * * *

(a) *All rockfish*. (i) *North of Cape Blanco*. Rockfish may not be taken and retained, possessed, or landed by any open access gear, including exempted trawl gear, north of Cape Blanco.

(ii) *South of Cape Blanco*. South of Cape Blanco the trip limit for rockfish taken with hook-and-line, longline or pot gear is 10,000 lb (4,536 kg) per vessel per fishing trip. Rockfish taken under this trip limit count toward cumulative trip limits.

* * * * *

(e) * * *

(ii) * * *

(A) All open access gear except setnets or trammel nets. For all open access gear except setnets or trammel nets, bocaccio may not be taken and retained, possessed, or landed north of Cape Blanco. South of Cape Mendocino, the monthly cumulative limit for bocaccio is 1,000 lb (454 kg) of which no more than 500 lb (227 kg) per trip may be taken and retained with hook-and-line, longline, or pot gear.

* * * * *

(2) * * *

(a) *Hook-and-line, longline, pot, setnet, trammel net.* * * *

* * * * *

Classification

These actions are authorized by the regulations implementing the FMP. The determination to take these actions is based on the most recent data available. Because of the need for immediate action to implement these changes at the beginning of the final ''B'' platoon period which starts November 16, 1998, and because the public had an opportunity to comment on the action at the November 1998 Council meeting, NMFS has determined that good cause exists for this document to be published without affording a prior opportunity for public comment or a 30-day delayed effectiveness period. These actions are taken under the authority of 50 CFR 660.323(b)(1) and are exempt from review under E.O. 12866.

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

Dated: November 13, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–30954 Filed 11–16–98; 4:59 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 223
Thursday, November 19, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

RIN 0584–AC30

Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Bloodwork Requirements

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend regulations governing the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) to provide that hematological tests for anemia no longer be a mandatory part of each WIC applicant's certification intake process, so long as at least one nutrition risk factor is present for the applicant. This proposed rule would allow the State agency the discretion to obtain such tests at certification or within 90 days of the date of certification. Such tests would be used for the purposes of assessing nutritional status, providing nutrition education, further tailoring food packages to meet nutritional needs, and referring to appropriate health and social services in the community. The proposed revisions to current WIC Program regulations will accommodate a changing health care environment; facilitate improved coordination with other health programs serving WIC applicants; minimize potentially repetitive, costly, and invasive blood testing procedures; reduce inconvenience to applicants, and expedite services to needy individuals applying for WIC Program benefits.

DATES: To be assured of consideration, comments must be postmarked on or before January 19, 1999.

ADDRESSES: Comments should be sent to Ronald J. Vogel, Acting Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 540, Alexandria, Virginia 22302, (703) 305–2730. All written comments will be available for public inspection during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at the above-noted address.

FOR FURTHER INFORMATION CONTACT: Barbara Hallman at (703) 305–2730 during regular business hours (8:30 a.m. to 5 p.m.) Monday through Friday.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Pursuant to that review, Samuel Chambers, Jr., Acting Administrator of the Food and Nutrition Service, has certified that this rule will not have a significant impact on a substantial number of small entities. State and local agencies and participants would be most affected by this proposed rule. This proposal would provide State and local agencies with increased flexibility in meeting certification requirements for the Program. Participants and applicants would also be affected by changes in the certification process which should result in expedited receipt of program services.

Paperwork Reduction Act

This proposed rule imposes no new reporting or recordkeeping requirements which are subject to review by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995.

Executive Order 12372

The Special Supplemental Nutrition Program for Women, Infants and Children (WIC) is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.557. For reasons set forth in the final rule in 7 CFR part 3015, subpart V, and related notice (48 FR 29115), this program is included in the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12998

This proposed rule has been reviewed under Executive Order 12998, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE** paragraph of this preamble. Prior to any judicial challenge to the application of the provisions of this rule, all applicable administrative procedures must be exhausted.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, the Food and Nutrition Service generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local or tribal governments, in the aggregate, or the private sector, of $100 million or more in any one year. When such a statement is required under section 202 of the UMRA, section 205 generally requires the Food and Nutrition Service to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objective of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector of $100 million or more in any one year. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Background

The Department reassesses WIC Program regulations and operations on an ongoing basis to ensure the continuing efficiency and effectiveness of the program. The subject of blood testing requirements has repeatedly been identified as warranting consideration for change based on frequent expressions of concern from the WIC community, including health

and medical officials at both the State and local levels. Numerous concerns have been brought to the Department's attention on the WIC Program's current blood test requirements, which may have the consequences of delaying enrollment of WIC applicants, duplicating effort, and creating unnecessary administrative expense, and hardship to applicants.

Three specific concerns regarding changes in the delivery and operation of health care also compel the Department's reassessment of the blood testing requirements. First, WIC blood tests coincide with WIC certification periods, thus, the schedule of blood tests required at WIC certification does not generally correspond with State, local, and generally accepted periodicity schedules and guidelines. The Department has been informed that many health programs, as cost containment measures, are commonly limiting blood test screening to a specified minimum seen as medically necessary, consistent with State, local, and generally accepted guidelines and other auxiliary health programs such as lead poisoning prevention programs or Early and Periodic, Screening, Diagnosis and Treatment programs. Health care providers have expressed concerns to the Department that the WIC Program's certification schedule, of which blood testing is a mandatory part, is creating a barrier to public health care coordination by artificially dictating periodicity for hematological testing, rather than conforming to standard clinical practice used by the State and local health care system.

Second, the move towards managed care programs as the primary source of health care has affected the ability of WIC local agencies to obtain blood test referral data in a timeframe that coincides with WIC certification periods. The source of health care for WIC participants and others has been shifting in many States from local health department clinics, many of which collected bloodwork to meet WIC's needs on site at the WIC clinic, to managed care settings in which blood tests are performed off site from the WIC clinic and thus provided to WIC on a referral basis.

Third, bloodwork data obtained from referral sources is becoming more frequently the norm in WIC because of Federal, State and local policies limiting blood handling only to persons or laboratories with specified medical credentials, thereby precluding some WIC local agencies from collecting or analyzing blood samples.

The Proposal

In response to these major concerns, the Department is proposing changes in the timing of anemia tests, extending the age of the data that may be used, clarifying allowable costs for anemia tests, and making corresponding changes to State Plan requirements.

These topics are discussed in greater detail below.

1. Hematological Tests for Anemia (§ 246.7 (e), (e)(1), and (e)(1) (i)–(ii))

Given the logistical difficulties of current bloodwork requirements described above, the Department is proposing that hematological tests for anemia no longer be a mandatory part of each WIC applicant's certification intake process as long as at least one nutrition risk factor is present for the applicant. However, given the importance of anemia testing in the target population and WIC's long and successful track record in reducing national rates of anemia, this rule proposes to require such a test but would permit its completion within 90 days of the date of certification, except as noted for infants as discussed later in this preamble. The test data would be used for the critical purposes of appropriately assessing an applicant's nutritional status, providing nutrition education, tailoring food packages and referring to health care or social services. Although the Department considers the collection of blood test data at certification as optimal to assist with performing the most timely and complete nutrition assessment and providing appropriate nutrition education and referrals, this proposal addresses the practical realities faced by State agencies by providing flexibility to obtain this data up to 90 days after the certification intake process. State agencies would, however, be required to provide for blood tests at certification for income eligible applicants with no other documented risk conditions (with the exception of presumptively eligible pregnant women as discussed below) in order to determine if they are at nutritional risk due to anemia.

2. Timing of Hematological Tests (§ 246.7 (e), (e)(1), and (e)(1) (i)–(ii))

Age of Bloodwork Data

The Department has received comments from State agencies that the allowable age for bloodwork data limits local agency flexibility to coordinate with other health care programs. To address the concerns with the age of bloodwork data, this proposed rulemaking would expand the current regulatory standard from 60 days to 90 days as the maximum age of bloodwork data used to assess nutritional risk. The proposed 90-day limit should allow additional flexibility to coordinate referral data with other health care programs, yet at the same time assure that the data accurately represent the applicant's health status. This rulemaking would assist in assuring this by continuing to require that such data are reflective of the categorical nutritional status/risk of women applicants. Thus, for a pregnant woman the test must be conducted during pregnancy, and for a breastfeeding or a postpartum woman the test must be conducted after the termination of their pregnancy.

The categorical restrictions do not apply to infants and children. As such, State agencies may use bloodwork data obtained from an infant to certify a child applicant, provided such data is not more than 90 days old. For example, bloodwork data obtained when the infant was 10 months old may be used to certify a 13-month old child.

Timing of Bloodwork

This proposed rule is intended to allow sufficient flexibility to States to accommodate generally accepted recommendations of maternal and child health and medical experts. In April 1998, the Centers for Disease Control and Prevention (CDC) issued a document titled, ''Recommendations to Prevent and Control Iron Deficiency in the United States.'' These recommendations are intended to guide primary health care providers in preventing and controlling iron deficiency in infants, preschool children, and women of childbearing age, particularly pregnant women—populations served by the WIC Program which are at high risk for iron-deficiency anemia. As such, the CDC recommendations stipulate that blood test results should be obtained at the earliest opportunity during pregnancy, from 4 to 6 weeks after delivery for postpartum and breastfeeding women, between 9 and 12 months of age for infants, and 6 months later (15–18 months) and annually from ages 2 to 5 years for children. This rule would provide States with the flexibility to conform to these recommendations to better assure that WIC staff have blood test data reflecting current status at appropriate times during the certification period yet provide that WIC participants receive timely nutrition care and referral during their certification periods.

For pregnant, breastfeeding, and postpartum women, a hematological test for anemia must be performed at

certification or within 90 days of the date of certification. The test may be from a referral source or may be conducted by WIC. The referral data may be up to 90 days old, so long as it is reflective of women applicants' categories, meaning the test must have been taken for pregnant women during pregnancy and for postpartum or breastfeeding women following termination of pregnancy.

Regarding pregnant women, current regulations at § 246.7(e)(1)(iii), which reflect WIC legislation, provide State agencies an additional flexibility by allowing them to presume that income-eligible pregnant women are nutritionally at risk and thus eligible to participate in the program. Presumptively eligible women can be certified immediately and can receive program benefits up until 60 days from the date they were certified, by which time a nutrition assessment must be conducted to establish nutritional risk. If the subsequent assessment determines that the woman does not meet nutritional risk criteria, the certification terminates on the date of the determination, or 60 days after the participant was certified, whichever is sooner. This proposed rule would eliminate the bloodwork requirement at certification or within the 60-day presumptive certification period for these women, further easing burden. However, under this proposal, if the nutrition assessment performed during the 60-day period does not include anemia testing and does not identify any other qualifying risk factor, a blood test must be performed or obtained from referral sources before that 60-day period elapses to permit continuity of service for women found to be anemic. This requirement enables such pregnant women to have the temporary presumptive certification extended to a full certification period without disruption to continued receipt of WIC benefits, should they be found anemic.

Consistent with the new CDC recommendations, all infants 9 months of age or older must have a hematological test for anemia between 9 and 12 months of age. Such test may be performed by the WIC agency or obtained from referral data. A blood test taken between 6 and 9 months of age may be used to meet the test requirement, however State agencies are encouraged to obtain blood test data between 9 and 12 months of age as recommended by CDC. In addition, recognizing that the CDC guidelines state that blood tests for anemia for infants under 6 months of age may be appropriate for preterm infants and low birthweight infants who were not fed iron-fortified formula, this proposal would permit, but not require, blood tests for such infants.

The Department also wishes to clarify that in cases where the State agency has opted to certify infants under 6 months of age up to their first birthday, as permitted in § 246.7(g)(1)(iv), such infants must receive a blood test between 9 and 12 months of age. The extension of the certification period up to the first birthday is only permitted provided the quality and accessibility of health care services are not diminished. A blood test for anemia is considered a critical component of health care services and thus, must be performed or obtained from referral services. As stated earlier in this preamble, the CDC recommendations identify the period between 9 and 12 months as the optimal timeframe for anemia testing for infants. Also considered as a critical component of health care services during the one-year period, is securing current length and weight measurements in order to assess the infant's growth.

State agencies that certify infants at 6 month intervals must ensure that infants 9 months of age or older receive a blood test. A blood test taken at 6 months of age may be used to meet the infant blood test requirement, because such data would fall within the 90-day age of bloodwork data timeframe.

For children, current provisions at Section 246.7(e)(1) allow State and local agency discretion to waive the blood test for children who were determined to be within the normal range at their last certification period, provided that such test is performed at least once every 12 months. The new CDC guidelines recommend a blood test between 9 and 12 months of age, 6 months thereafter (around 15 to 18 months of age), and annually thereafter for each year from ages 2 to 5 years of age. Thus, this rule proposes that State agencies perform a blood test between 12 and 24 months of age to permit them full flexibility to accommodate arrangements for bloodwork for these children within the CDC recommended 6-month timeframe following their infant bloodwork. While for most children, this would fall between 15 and 18 months of age, this proposal would expand the allowable timeframe to accommodate practical logistical difficulties and circumstances where, for example, there was no previous bloodwork during infancy, it was taken during infancy at a time other than the recommended 9 to 12 month period, or other logistical complications which made bloodwork during the optimal 15 to 18 month period infeasible. Nevertheless, because pediatric health authorities generally recommend that children have a blood test during the most vulnerable period of 15 to 18 months, when anemia is more likely to become manifest, State agencies are expected to make every effort to coordinate the scheduling of bloodwork for children between 12 and 24 months old within the recommended 15 to 18 month timeframe.

As for women, the referral bloodwork data allowed to be used to certify children and infants can be up to 90 days old. However, although bloodwork data obtained when an infant was between 9 and 12 months old may be used to certify a 12-month old child, such data cannot be used to fulfill the blood test that is required between 12 and 24 months of age nor can it be used to waive a blood test. Children who had an inadequate iron intake during infancy are at greatest risk of developing anemia between 12 and 24 months of age. Thus, it is critical that children receive a blood test for anemia during the period of 12–24 months of age. As such, the current provision at § 245.7(e) has been modified to state that for children ages two and older who were determined to be within the normal range at their last certification, the blood test may be waived, provided that a blood test is performed at least once every 12 months.

Other Nutrition Assessment Data

The Department again emphasizes that this proposal provides for flexibility only in the timing of the collection and age of anemia blood test data: If not completed at certification (using current data, or data up to 90 days old), it must be completed within 90 days of certification except as noted for infants as discussed earlier in this preamble. All other nutrition assessment data, e.g., height and weight, and dietary and medical assessment data, must be collected as currently required; namely: It must be collected at certification for breastfeeding and postpartum women, infants and children, and, for pregnant women unless the State agency has opted to implement presumptive eligibility for pregnant women. State agencies implementing presumptive eligibility must still collect height, weight and dietary and medical assessment data for pregnant women within 60 days of certification to determine eligibility. The Department considers the effort at certification to measure and record height or length and weight and collect dietary and other medical data for all applicants to be minimal but necessary during the intake process, and not subject to the difficulties related to bloodwork

assessment. These timely measurements and data are fundamental to the assessment of nutritional risk of all categories of applicants.

3. Allowable Costs for Anemia Tests (§ 246.14(c)(2) (i)–(iv))

Current WIC Program regulations (§ 246.14(c)(2) (i)–(iv)) stipulate that fees, equipment, salary and other costs associated with the collection of hematological data to test for anemia for certification purposes are allowable Program costs. This proposed rule would specify that collection of hematological data is not only for certification purposes, but also for health assessment and monitoring purposes. This proposal would also allow State agencies to perform one additional hematological test as medically necessary in follow-up to a finding of anemia within a certification period. The Department proposes changes in § 246.14(c)(2) and (c)(2) (i)–(iv) to clarify that this follow-up test for nutrition assessment purposes is an allowable WIC cost when deemed necessary for health monitoring as determined by the WIC competent professional authority (CPA).

While this rule would permit WIC to pay for one follow-up test, State agencies are encouraged to weigh the cost effectiveness of WIC expenditures for such purposes against other competing and critical WIC needs. The Department generally believes that follow up monitoring of blood values of persons with anemia is largely the responsibility of health care providers, and should be treated as a medical, rather than solely a nutritional, concern. As such, the Department encourages State agencies to explore other locally available sources for ongoing health care and assessments for WIC participants with anemia.

4. State Plan (§ 246.4(a)(11)(i))

State agencies must incorporate their blood test data requirements and timeframes in detail in the ''Certification Procedures'' section of their State Plan Procedure Manual.

Appropriate procedures that must be followed when blood test data are obtained include: (1) Make notations in the participant's file with respect to nutrition risk factors listed and priority as appropriate; (2) inform the woman or parent/guardian of the outcome and meaning of the blood test if the results show anemia; (3) provide follow-up nutrition education, if appropriate; (4) make adjustments in the food package, as appropriate; and (5) make referrals to health care or social services, as appropriate.

List of Subjects in 7 CFR Part 246

Administrative practice and procedure, Civil rights, Food assistance programs, Food and Nutrition Service, Food donations, Grant programs-health, Grant programs—social programs, Indians, Infants and children, Maternal and child health, Nutrition, Nutrition education, Penalties, Reporting and recordkeeping requirements, Public assistance programs, WIC, Women.

For the reasons set forth in the preamble, 7 CFR part 246 is proposed to be amended as follows:

PART 246—SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN

1. The authority citation for part 246 continues to read as follows:

Authority: 42 U.S.C. 1786.

2. In § 246.4, paragraph (a)(11)(i) is revised to read as follows:

§ 246.4 State Plan.

(a) * * *

(11) * * *

(i) Certification procedures, including a list of the specific nutritional risk criteria by priority level which cites conditions and indices to be used to determine a person's nutritional risk, hematological data requirements including timeframes for the collection of such data, the State agency's income guidelines for Program eligibility, and any adjustments to the participant priority system made pursuant to § 246.7(e)(4) to accommodate high-risk postpartum women or the addition of Priority VII;

* * * * *

2. In § 246.7:

a. The introductory text of paragraph (e) is revised;

b. The introductory text of paragraph (e)(1) is removed;

c. Paragraphs (e)(1)(i), (e)(1)(ii), (e)(1)(iii), and (e)(1)(iv) are redesignated as paragraphs (e)(1)(iii), (e)(1)(iv), (e)(1)(v), and (e)(1)(vi) respectively;

d. New paragraphs (e)(1)(i) and (e)(1)(ii) are added;

e. Newly redesignated paragraphs (e)(1)(iii), (e)(1)(iv) and (e)(1)(vi) are amended by adding a heading; and

f. Newly redesignated paragraphs (e)(1)(v) is revised.

The revisions and additions read as follows:

§ 246.7 Certification of participants.

* * * * *

(e) *Nutritional risk.* To be certified as eligible for the Program, applicants who meet the Program's eligibility standards specified in paragraph (c) of this section must be determined to be at nutritional risk. A competent professional authority on the staff of the local agency shall determine if a person is at nutritional risk through a medical and/or nutritional assessment. This determination may be based on referral data submitted by a competent professional authority not on the staff of the local agency. Nutritional risk data shall be documented in the participant's file and shall be used to assess an applicant's nutritional status and risk, tailor the food package to address nutritional needs, design appropriate nutrition education, and make referrals to health and social services for follow-up, as necessary and appropriate. Except as stated in paragraph (e)(1)(v) of this section, at least one nutritional risk must be documented at the time of certification in order for an income eligible applicant to receive WIC benefits.

(1) *Determination of nutritional risk.*—(i) *Required nutritional risk data.* At a minimum, height or length and weight shall be measured and documented in the applicant's file at the time of certification. In addition, a hematological test for anemia such as a hemoglobin, hematocrit, or free erythrocyte protoporphyrin test shall be performed at certification or within 90 days of the date of certification. However, such hematological tests are not required, but are permitted, for infants under nine months of age. All infants nine months of age and older (who have not already had a hematological test performed or obtained, between the ages of six and nine months, by a competent professional authority), shall between nine and twelve months of age have a hematological test performed or obtained from referral sources. This hematological test does not have to occur within 90 days of the date of certification. Only one test is required for children between 12 and 24 months of age. At the State or local agency's discretion, the hematological test is not required for children ages two and older who were determined to be within the normal range at their last certification. However, the hematological test shall be performed on such children at least once every 12 months. Hematological test data submitted by a competent professional authority not on the staff of the local agency may be used to establish nutritional risk. Height or length and weight measurements and, with the exceptions specified in this paragraph, hematological tests, shall be obtained for all participants, including those who are determined at nutritional

risk based solely on the established nutritional risk status of another person, as provided in paragraphs (e)(1)(iv) and (e)(1)(v) of this section.

(ii) *Timing of nutritional risk data.*

(A) *Weight and height or length.* Weight and height or length shall be measured for program participation at the time of certification.

(B) *Hematological test for anemia.* For pregnant, breastfeeding, and postpartum women, and child applicants, the hematological test for anemia shall be performed or obtained from referral sources at the time of certification or within 90 days of the date of certification. However, a State agency cannot use hematological data obtained from referral sources that is taken more than 90 days prior to the date of certification for program participation.

Infants nine months of age and older (who have not already had a hematological test performed, between six and nine months of age, by a competent professional authority or obtained from referral sources), shall between nine and twelve months of age have a hematological test performed or obtained from referral sources. Such a test may be performed more than 90 days after the date of certification. For pregnant women, the hematological test for anemia shall be performed during their pregnancy. For persons certified as postpartum or breastfeeding women, the hematological test for anemia shall be performed after the termination of their pregnancy. The participant or parent/guardian shall be informed of the test results when there is a finding of anemia, and notations reflecting the outcome of the tests shall be made in the participant's file. Nutrition education, food package tailoring, and referral services shall be provided to the participant or parent/guardian, as necessary and appropriate.

(iii) *Breastfeeding dyads.* * * *

(iv) *Infants born to WIC mothers or women who were eligible to participate in WIC.* * * *

(v) *Presumptive eligibility for pregnant women.* A pregnant woman who meets the income eligibility standards may be considered presumptively eligible to participate in the program, and may be certified immediately without an evaluation of nutritional risk for a period up to 60 days. A nutritional risk evaluation of such woman shall be completed not later than 60 days after the woman is certified for participation. A hematological test for anemia is not required to be performed within the 60-day period unless the nutrition risk evaluation performed does not identify a risk factor. If no risk factor is identified, a hematological test for anemia must be performed or obtained from referral sources before the 60-day period elapses. Under the subsequent determination process, if the woman does not meet any nutritional risk criteria, including anemia criteria, the woman shall be determined ineligible and may not participate in the program for the reference pregnancy after the date of the determination, unless she subsequently reapplies for program benefits and is found to be both income eligible and at nutritional risk. Notification of the ineligibility determination shall be given in accordance with paragraph (j)(5) of this section. In addition, if the nutritional risk evaluation is not completed within the 60-day timeframe, the woman's participation shall end. As set forth in paragraph (j)(8) of this section, notification must be given prior to expiration of the certification period.

(vi) *Regression.* * * *

* * * * *

3. In § 246.14, paragraph (c)(2) is revised to read as follows:

§ 246.14 Program costs.

* * * * *

(c) * * *

(2) The cost of Program certification and nutrition assessment procedures, including the following:

(i) Laboratory fees incurred for up to two hematological tests for anemia per individual per certification period conducted to assess nutritional status and determine whether such individual is at nutritional risk. The first test shall be to determine anemia status. The second test may be performed only in follow up to a finding of anemia when deemed necessary for health monitoring as determined by the WIC State agency;

(ii) Expendable medical supplies necessary to assess nutritional status and to determine whether persons are at nutritional risk;

(iii) In connection with nutrition assessment and nutritional risk determinations, medical equipment used for taking anthropometric measurements, such as scales, measuring boards, and skin fold calipers; and for blood analysis to detect anemia, such as spectrophotometers, hematofluorometers and centrifuges; and

(iv) Salary and other costs for time spent on nutrition assessment and certification.

* * * * *

Dated: October 2, 1998.

Samuel Chambers, Jr.,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 98–30917 Filed 11–18–98; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 956

[Docket Nos. 98AMA–FV–956–1; FV98–956–1]

Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon; Secretary's Decision and Referendum Order on Proposed Amendment of Marketing Agreement and Order No. 956

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and referendum order.

SUMMARY: This decision proposes amendments to the marketing agreement and order (order) for sweet onions and provides Walla Walla Sweet Onion producers with the opportunity to vote in a referendum to determine if they favor the proposed amendments. The proposed amendments were submitted by the Walla Walla Sweet Onion Committee (committee), the agency responsible for local administration of the order. The proposed changes would broaden the scope of the order by adding authority for grade, size, quality, maturity, and pack regulations, mandatory inspection, marketing policy statements, and minimum quantity exemptions. In addition, a proposal is included to make a minor change in the committee's name. These changes are being proposed to improve the operation and functioning of the Walla Walla Sweet Onion marketing order program.

DATES: The referendum shall be conducted from November 25, 1998, through December 10, 1998. The representative period for the purpose of the referendum herein ordered is June 1, 1997, through May 31, 1998.

FOR FURTHER INFORMATION CONTACT: Robert Curry, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Northwest Marketing Field Office, 1220 S.W. Third Avenue, room 369, Portland, Oregon 97204; telephone: (503) 326–2724, or Fax: (503) 326–7440; or Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, Fruit and

Vegetable Programs, AMS, USDA, room 2525–S, Washington, D.C. 20250–0200; telephone: (202) 720–2491, or Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax (202) 205–6632.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on March 25, 1998, and published in the April 1, 1998, issue of the **Federal Register** (63 FR 15787). Recommended Decision and Opportunity to File Written Exceptions issued on September 17, 1998, and published in the **Federal Register** on September 23, 1998 (63 FR 50802).

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Preliminary Statement

The proposed amendments were formulated on the record of a public hearing held in Walla Walla, Washington, on April 7, 1998, to consider the proposed amendment of Marketing Agreement and Order No. 956, regulating the handling of sweet onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon, hereinafter referred to collectively as the ''order.'' The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the Act, and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR part 900). The Notice of Hearing contained amendment proposals submitted by the committee and the U.S. Department of Agriculture.

The committee's proposals would add the authority for grade, size, quality, maturity, and pack regulations, mandatory inspection, marketing policy statements, and minimum quantity exemptions. In addition, the committee proposed changing its name from the Walla Walla Sweet Onion Committee to the Walla Walla Sweet Onion Marketing Committee.

Also, the Fruit and Vegetable Programs of the Agricultural Marketing Service (AMS), U.S. Department of Agriculture, proposed to allow such changes as may be necessary to the order, if any or all of the above amendments are adopted, so that all of its provisions conform with the proposed amendment. No conforming changes have been deemed necessary.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of the Agricultural Marketing Service (AMS) on September 17, 1998, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision and Opportunity to File Written Exceptions thereto by October 23, 1998. None were received.

Small Business Considerations

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than $500,000. Small agricultural service firms, which include handlers regulated under the order, are defined as those with annual receipts of less than $5,000,000.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments on small businesses. The record indicates that growers and handlers would not be unduly burdened by any additional regulatory requirements, including those pertaining to reporting and recordkeeping, that might result from this proceeding.

During the 1996–97 crop year, approximately 33 handlers were regulated under Marketing Order No. 956. In addition, there were about 64 producers of Walla Walla sweet onions in the production area. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are compatible with respect to small entities.

Twenty-four of the 33 handlers are also producers who handle their own onions. There are seven commercial packinghouses that pack approximately 90 percent of all Walla Walla sweet onions. In the 1996–97 season, the average f.o.b. price for Walla Walla sweet onions was $8.70 per 50-pound sack. Total production for the 1996–97 season was 666,000 50-pound containers. A handler who packed over 550,000 50-pound units would exceed the SBA definition of a small handler. According to record evidence, there are two dominant handlers in the industry and at least one of these handlers could be considered a large handler under this definition. The record revealed that all Walla Walla sweet onion growers would be considered small producers. Therefore, it can be concluded that the majority of growers and handlers would be considered small businesses.

The marketing order, promulgated in 1995, currently defines the production area where onions must be grown to be designated as Walla Walla sweet onions. It also provides the authority to fund research and promotion activities through assessments on handlers, as well as establish container regulations. Although the marketing order as currently written addresses some of the marketing problems facing the industry, the Walla Walla sweet onion industry continues to experience marketing problems.

Economic data presented on the record indicates that the acres planted have decreased from 1,800 in 1988 to 900 acres planted in 1997. This is a 50% decrease since 1988. Similarly, acres harvested have decreased from 1,600 in 1988 to 900 in 1997.

In addition, the data shows production has decreased dramatically from 1,280,000 50-pound containers in 1988 to 666,000 50-pound containers in 1997. This is a 48% decrease in production in the last 10 years.

Total crop values have declined from $9,345,000 in 1989 to $5,794,000 in 1997. This is a 38% decrease in total crop values in 9 years.

U.S. per capita consumption of fresh onions has increased from 10.7 pounds per year in 1981 to 17.5 pounds per year in 1997. This is a 64% increase in per capita use of fresh onions, while the production of Walla Walla sweet onions has decreased. This increased consumption shows that this industry has the potential to improve.

In addition, economic data shows that competition from other sweet onion producing areas has increased dramatically. Producers of Walla Walla sweet onions have lost market share to other sweet onions such as Georgia Vidalia onions, California Imperial onions, Hawaii Maui Sweets, New Mex. Sweets from New Mexico, and Texas hybrid 1015Y's.

The acres harvested and production of Vidalia onions have increased by 236% and 447%, respectively, since 1989. The Vidalia sweet onion industry's normal harvesting and shipping season begins in the middle of April and ends in late July. The Vidalia onion industry has

been successful in extending its shipping season into September and October by establishing controlled atmosphere storage capabilities. This may be having a price dampening effect on Walla Walla sweet onions because of the overlap of shipping seasons and direct competition caused by the extended season of Vidalia onions.

Of the six sweet onion-producing areas in the U.S., Walla Walla sweet onion prices are lower than Maui, Vidalia and Texas onions. In addition, the economic report presented on the record shows that Vidalia onions always receive higher prices than Walla Walla sweet onions with an average price differential of $5 per 50-pound container.

The Walla Walla sweet onion season begins in middle or late June and continues until the end of July. The shipping season lasts for approximately six weeks. Prices for Walla Walla sweet onions at the beginning of the season start relatively high. As the season progresses, prices generally fall. This seasonal price behavior has resulted in producers harvesting onions before they are fully matured. This has led to poor quality onions being sold on the market that make an unfavorable impression on consumers, supermarkets, and other outlets that handle Walla Walla sweet onions. In addition, this situation appears to have shortened the marketing season.

The quality at the beginning of the season has a tendency to set the market tone for the remainder of the season. If quality is high at the beginning of the season, this makes a favorable impression on buyers as well as consumers. With high quality onions at the start of the season, consumers are likely to become repeat customers. However, if quality is low at the beginning of the season, receivers as well as consumers are disappointed. Initial low quality will result in consumers shopping for alternative sweet onions and they will not be repeat purchasers.

Minimum quality and size requirements are established under marketing orders to ensure that substandard produce does not find its way to the market and destroy consumer confidence and harm producers' returns. The objective of implementing quality control and size provisions under marketing orders is to make the markets work more efficiently, improve quality, and to market preferred sizes. The use of quality and size standards through a grading scheme benefits consumers by assuring the buyers that they are getting high quality produce of desirable size. This helps build consumer demand in the long run. Minimum quality and size standards are deemed desirable because they prevent the shipment of poor quality produce, which ends up harming producers' ability to sell their product and consumers' willingness to buy.

The reputation of Walla Walla sweet onions has deteriorated over the recent years due to the poor quality of some of the onions marketed. Record evidence indicated that a surveillance project conducted during the 1997 harvest season by the Washington State Department of Agriculture on behalf of the committee noted that a significant amount of onions sold within the immediate Walla Walla area did not meet minimum U.S. standards. Walla Walla sweet onions usually meet at least U.S. No. 2 grade, but only a small volume meets U.S. No. 1 grade.

Establishing quality and size provisions under the Walla Walla sweet onion marketing order would provide an incentive for producers to allow their onions to fully mature, resulting in a higher quality of onion marketed. Establishing quality and size requirements would ensure consistent quality and acceptable sizes of onions throughout the season. This tends to benefit consumers through a higher quality of onion and benefits producers with a higher demand for their product. In the long run, high quality, seasonal produce builds name recognition and helps enhance demand.

The Walla Walla sweet onion industry has attempted to voluntarily implement quality control. Prior to implementation of the marketing order, the Walla Walla Sweet Onion Commission, a voluntary organization composed of producers and handlers, implemented quality rules for its members. These rules restricted the sale of U.S. No. 2 grade onions and culls from fresh market use, and included random inspections. Common defects that caused the onions to fail to meet these requirements were seed stems, immaturity, and decay. Because of the voluntary nature of these imposed regulations, this project was unsuccessful.

Currently, the marketing order allows only onions grown in the designated production area to be marketed as Walla Walla sweet onions. Research activities as well as promotional activities are also authorized under the current order. Broadening the scope of the order by authorizing minimum quality and size requirements would add another marketing tool to help the industry solve marketing problems, especially those related to quality. Minimum quality and size requirements would allow the industry to improve their name recognition with a quality product. Amending the order by authorizing the establishment of minimum quality and size requirements would help to expand markets and deliver a more consistent quality product of desirable size to the consumer.

Without any quality and size provisions in place, industry members can place substandard product on the market that is severely impacting the credibility and marketability of all Walla Walla sweet onions. Because of these current practices, the industry is experiencing problems establishing and maintaining markets in areas that have traditionally been strong. The industry has lost markets due to poor quality, short shelf life and increased competition from other sweet onion producing areas.

Minimum quality and size requirements would help alleviate some of these problems and work to improve producer returns by strengthening consumer and retail demand. Mandatory inspection requirements would make all producers and handlers responsible for the quality of the industry's output. Poor quality would not be mixed with better quality. The record revealed that most handlers are already sorting by size. The Department's Market News Service reports prices for jumbo and medium onions, which further indicates that handlers are sorting by size. Most handlers also pack to a certain quality standards, usually based on U.S. grade standards. Therefore, handlers would not be required to drastically modify their packing operations or purchase new equipment. The committee considered grower and handler costs very seriously and even discussed the cost burden between larger and smaller handlers. The minimum quantity exemption should address such concerns.

Growers may be faced with a potential cost item related to improved equipment that could be needed in order to meet minimum quality or size standards. A handler testified that growers could update their mechanical seeders so that the seeds could be planted equidistant from each other, which would result in onions with better shape, more uniformity and larger size. There are increasingly more growers that are purchasing this equipment or contracting with other growers that have the seeders. Seed coating or pelleting is another alternative for better seed placement, which is less expensive than the purchase of a highly advanced seeder. The seed coating adds a clay-like

material to the exterior of the seed, so that the seeders do not cause two or three seeds to drop at the same time. It appears that costs associated with growers modifying their cultural practices to abide by minimum quality and size standards would be minimal and offset by improved producer returns.

A witness for the committee testified that the benefits of including the authority for minimum quality and size standards would far outweigh any negative impact to producers and handlers and the industry could start rebuilding markets and creating new ones.

The Federal-State Inspection Service Office that is responsible for inspecting Walla Walla sweet onions is currently located in Pasco, Washington, less than 50 miles from Walla Walla. According to record testimony, inspectors would be staffed in Walla Walla during the season if mandatory inspection was implemented.

Inspection costs in the State of Washington are computed on an hourly basis or a per unit basis, whichever is greater. If the hourly rate is used, the rate applies to the total number of the inspector's hours, including travel time. Depending upon the workload, inspectors could be based in Walla Walla during the season, which would lessen travel costs. Record testimony indicated that the hourly inspection rate is $26, with a two-hour minimum, or $52, for inspection or $208 for an eight-hour day. However, the State of Washington Agriculture Code regulations appearing at Chapter 16–400–210 WAC provide that the hourly inspection rate is $23, with no minimum time required. In accordance with the Rules of Practice and Procedure governing the formulation of marketing agreements and orders (7 CFR Part 900), official notice has been taken of the fees set forth in the State of Washington regulations at Chapter 16–400–210 WAC. The fee schedule will be used in our analysis. On a per unit basis, the inspection fee is $.04 per 50-pound unit.

As stated above, inspection costs are computed on an hourly basis or a per unit basis, whichever is greater. For example, if an inspection was requested on 100 50-pound containers and the inspection lasted one hour, the per unit cost for inspecting the lot would be $4, and the per hour cost would be $23. Under this scenario, the handler would be charged $23 for the inspection, the greater amount. This would average $.23 per unit.

Under the current fee schedule, it would be necessary for the inspection office to inspect over 4,600 50-pound units of onions per day in order to maintain the fee at $.04 per 50-pound unit. If handlers do not handle over 4,600 50-pound units per day, their inspection costs would be computed at the hourly rate. Even for handlers who normally handle that volume, there would be times during the season, particularly in the beginning and end of the season, where the volume of onions inspected would not be at a level where the $.04 per 50-pound unit could be used. The fees would convert to the hourly rate.

Record testimony indicated that the committee is concerned with increased costs associated with these proposals, particularly, the costs of inspection. The committee discussed options to address these concerns and developed two remedies intended to alleviate the cost burdens on small handlers. First, the committee recommended adding authority in the order for the committee to contract with the Federal-State Inspection Service and pay for all inspections of Walla Walla sweet onions. Second, the committee recommended an exemption from inspection for handlers of small lots of onions.

Under the scenario of contracting with the inspection service, each handler would pay a separate assessment for inspection costs at a per unit price. All handlers would pay the same price per bag for inspection, whether exempt or not. Under such a contract, the larger volume handlers would pay more of the inspection costs because they handle so many more units of onions. In this manner, the burden of inspection costs for smaller volume handlers could be minimized. This was discussed with representatives of the inspection service.

A Washington State inspector confirmed that travel costs would be lessened if an inspector was based in Walla Walla. However, the inspector indicated that $.04 per 50-pound unit would be the minimum cost for the inspection. Costs could increase depending on the workload. If the workload was light, such as late in the season when the quantities of onions are diminishing, it could be more costly for an inspector to conduct inspections on smaller lots. It could be necessary to convert the cost to an hourly cost, which would exceed $.04 per 50-pound unit.

There have been discussions regarding contractual relationships with the inspection service but factors such as inspection of small quantities would need to be addressed in the contract. The inspector testified that the inspection office must cover the cost of inspectors and if there was not a full day's work in Walla Walla, the inspector would need to travel elsewhere. These situations would need to be factored into any contractual agreements. A witness for the proposals testified that because of the variables associated with inspecting Walla Walla sweet onions, it is estimated the cost of inspection would range between $.04 and $.06 per 50-pound unit if the per unit price were used in a contractual agreement. The committee could consider only contracting with the inspection service during the busiest parts of the season in order to keep the inspection cost lower. The committee could also consider only regulating for part of the season.

Another option the committee developed to address the issues of costs on small handlers would provide an exemption for handlers who handle up to, but not more than 2,000 pounds of Walla Walla sweet onions per shipment. These handlers would be exempt from inspection requirements, but these exempt onions would still be required to meet the quality and size requirements in effect at the time of shipment. Handlers could make more than one exempt shipment per day as long as each shipment was at or below the 2,000-pound exemption. These exempt onions would not be exempt from assessments. The committee would be able to recommend modification of the minimum quantity exemption through informal rulemaking, if necessary. The committee would be responsible for monitoring compliance with this proposal. If necessary, the committee would conduct spot inspections at the committee's expense to ensure that inspection-exempt onions were meeting the established quality and size regulations.

Record testimony indicated the implementation of these proposals could necessitate that the committee increase the manager's work hours in order to monitor compliance with these provisions. This could result in the need to recommend an increase in the marketing order assessment rate. However, an increase is not expected because the increased production, demand, and expanded markets would help to supply ample funds to administer the program without increasing the assessment rate.

When the committee was considering amending the marketing order to include quality and size requirements, a compliance subcommittee was appointed to address concerns of small producers and handlers. The subcommittee is composed of producers and handlers who developed the

minimum quantity exemption provisions of the committee's proposals. The subcommittee considered different options during their deliberations and determined that the current proposed amendments were the most advantageous to small growers and handlers while still allowing quality objectives to be met.

Inspection requirements would not apply to shipments of Walla Walla sweet onions that are 2,000 pounds or less. However, these onions would be required to meet any minimum requirements in effect at the time of shipment. This would be enforced through periodic spot examinations conducted by the committee. A general consensus among industry members was that establishing a minimum quantity exemption was necessary to relieve any undue financial burden on small volume handlers. The committee would be responsible for monitoring compliance with this proposal by conducting spot inspections, if necessary, at the committee's expense. It is estimated that compliance with these proposals could increase administrative costs for the committee by $3,000, or a 3 percent increase in the current committee budget.

As previously stated, 7 commercial handlers pack 90 percent of the industry's crop. Approximately 26 handlers handle the remaining 10 percent. With the 2,000 pound inspection exemption implemented, it is estimated that 50 percent of the remaining 26 handlers would be exempt from mandatory inspection. This represents approximately 42 acres or 25,000 50-lb. units, which is 5 percent of the crop. Therefore, it appears that at least 13 handlers would be exempt from inspection, while 95 percent of the production would still be inspected. This proposed amendment would minimize the impact on small handlers without jeopardizing quality objectives.

These exempt onions would not be exempt from assessments. In addition, exempt onions would still be required to meet the minimum quality and size requirements established by the committee and approved by the Secretary. Committee staff would conduct spot inspections to monitor the exempt handlers' activities. The proposal allows for modification of this provision depending on industry needs. The committee does not believe it would ever recommend not having a minimum quantity exemption.

A witness for the proposals testified that the only cost increase would be the cost of inspection. He further stated that the cost of inspection is a minor cost item, compared to labor and growing costs. Walla Walla sweet onion production is labor-intensive and high cost. A premium price is necessary for the onions to pay the costs of production.

This witness testified that a grower normally has $1,800 to $2,000 an acre invested in production prior to harvest. Using this estimate and assuming a yield of 190 50-pound units per acre, inspection costs (estimated at $.04 to $.06 per 50-pound unit) are estimated to be $7.60 to $11.40 per acre, or an estimated 0.4 to 0.6 percent increase of pre-harvest cost.

Following is an example of possible costs associated with implementing quality and size standards. Testimony revealed that if a U.S. Commercial grade were established as a minimum quality standard, 5 to 10 percent of the onions would not meet that grade and would have to be disposed of in secondary outlets. Using last year's production figures (1996–97), 666,000 50-pound containers were produced for sale. If 10 percent would not make U.S. Commercial grade, 66,600 50-pound containers would need to be disposed of in secondary outlets. It is estimated that 5 percent of the crop, or 33,300 pounds, would be exempt from inspection. Therefore, approximately 566,100 50-pound containers would need to be inspected. Using the high inspection cost estimate of $.06 per container, inspection costs for the entire crop would be $33,966. Seven commercial packing houses pack 90 percent of the crop which would account for $30,569.40 of the costs. The remaining 26 small handlers would be responsible for the remaining inspection costs of $3,396.60, or approximately $131 per handler for inspection fees for that season.

Minimum quality and size standards would maintain the integrity of the product so that the commodities' overall quality image is not diminished by a low quality sample. The principle objective of a grading system is to make the market work more efficiently. Minimum quality and size requirements would improve information between buyers and sellers. Contracts could be made based on grade specifications, and buyers need not personally inspect each lot of product. Standardization of quality and size reduces uncertainty between buyers and sellers, and this helps reduce marketing costs. The goal of an effective grading system is to improve quality and size. Minimum quality and size standards would help ensure that substandard produce does not find its way to the market and destroy consumer confidence and harm producers' returns.

The ability of producers of Walla Walla sweet onions to increase the demand for their product depends on their ability to differentiate their product and to create a favorable image (including quality) with consumers. In recent years, this favorable image has deteriorated. Culling out low quality produce of undesirable size, even though the demand for it may be elastic, may increase total returns. The price increase from the higher quality sold is expected to be large enough to offset the effect of the reduced quantity sold, even after the costs of culling are covered.

Record evidence also shows that the collection of information under the marketing order would not be effected if the amendments were made to the marketing order. No increase in information collection would occur with the adoption of the amendments alone. However, if these proposals are implemented and the committee recommends regulations to impose quality and size requirements, it is possible that additional information would be needed from handlers to aid in administering the program effectively. It is also possible that because inspection certificates would be received by the committee, needed information could be collected from the certificates and the information collection requirements could be reduced. Whatever information collection changes result from any regulations, the committee and the Department would submit such changes to the Office of Management and Budget (OMB) for approval. Current information collection requirements for Part 956 are approved by OMB under OMB number 0581–0172.

The proposed amendment to modify the name of the committee from the Walla Walla Sweet Onion Committee to the Walla Walla Sweet Onion Marketing Committee would have no regulatory impact on handlers or growers.

Accordingly, this action would not impose any additional reporting or recordkeeping requirements on either small or large Walla Walla sweet onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. All of these amendments are designed to enhance the administration and functioning of the marketing order to the benefit of the industry.

While the implementation of quality and size requirements may impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of these costs may be passed on to growers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the meetings regarding these proposals as well as the hearing date were widely publicized throughout the Walla Walla sweet onion production area industry and all interested persons were invited to attend the meetings and the hearing and participate in committee deliberations on all issues. All committee meetings and the hearing were public forums and all entities, both large and small, were able to express views on these issues. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

Civil Justice Reform

The amendments proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the amendments.

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

Findings and Conclusions

The material issues, findings and conclusions, rulings, and general findings and determinations included in the Recommended Decision set forth in the September 23, 1998, issue of the **Federal Register** (63 FR 50802) are hereby approved and adopted.

Marketing Agreement and Order

Annexed hereto and made a part hereof is the document entitled ''Order Amending the Order Regulating the Handling of Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon.'' This document has been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions.

It is hereby ordered, That this entire decision be published in the **Federal Register**.

Referendum Order

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR part 900.400 *et seq.*) to determine whether the issuance of the annexed order amending the order regulating the handling of sweet onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon, is approved or favored by producers, as defined under the terms of the order, who during the representative period were engaged in the production of sweet onions grown in the production area.

The representative period for the conduct of such referendum is hereby determined to be June 1, 1997, through May 31, 1998.

The agents of the Secretary to conduct such referendum are hereby designated to be Robert Curry, Marketing Specialist, and Gary Olson, Regional Manager, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 S.W. Third Avenue, room 369, Portland, Oregon 97204; telephone (503) 326–2724.

List of Subjects in 7 CFR Part 956

Marketing agreements, Onions, Reporting and recordkeeping requirements.

Dated: November 13, 1998.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

Order Amending the Order Regulating the Handling of Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon [1]

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the order; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings and Determinations Upon the Basis of the Hearing Record.*

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon the proposed amendments to the Marketing Agreement and Order No. 956 (7 CFR part 956), regulating the handling of sweet onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The marketing agreement and order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The marketing agreement and order, as hereby proposed to be amended, regulate the handling of sweet onions grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing order upon which hearings have been held;

(3) The marketing agreement and order, as hereby proposed to be amended, are limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act; and

(4) The marketing agreement and order, as hereby proposed to be amended, prescribe, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of sweet onions grown in the production area; and

(5) All handling of sweet onions grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, all handling of sweet onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon, shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby proposed to be amended as follows:

With one exception, the provisions of the proposed marketing agreement and the order amending the order contained in the Recommended Decision issued by the Administrator on September 17, 1998, and published in the **Federal Register** on September 23, 1998, shall be and are the terms and provisions of this order amending the order and are set forth in full herein. One change is made herein for clarity in § 956.70(a).

PART 956—SWEET ONIONS GROWN IN THE WALLA WALLA VALLEY OF SOUTHEAST WASHINGTON AND NORTHEAST OREGON

1. The authority citation for 7 CFR part 956 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In part 956, § 956.14 is added and reserved, and new §§ 956.15 and 956.16 are added to read as follows:

§ 956.15 Grade and size.

Grade means any of the officially established grades of onions, including maturity requirements and *size* means any of the officially established sizes of onions as set forth in the United States standards for grades of onions or amendments thereto, or modifications thereof, or variations based thereon, or States of Washington or Oregon standards of onions or amendments thereto or modifications thereof or variations based thereon, recommended by the committee and approved by the Secretary.

§ 956.16 Pack.

Pack means a quantity of Walla Walla Sweet Onions specified by grade, size, weight, or count, or by type or condition of container, or any combination of these recommended by the committee and approved by the Secretary.

§ 956.20 [Amended]

3. In § 956.20, paragraph (a) is amended by adding the word ''Marketing'' immediately following the word ''Onion'' in the first sentence.

4. In part 956, a new § 956.60 is added to read as follows:

§ 956.60 Marketing policy.

(a) *Preparation.* Prior to each marketing season, the committee shall consider and prepare a proposed policy for the marketing of Walla Walla Sweet Onions. In developing its marketing policy, the committee shall investigate relevant supply and demand conditions for Walla Walla Sweet Onions. In such investigations, the committee shall give appropriate consideration to the following:

(1) Market prices for sweet onions, including prices by variety, grade, size, quality, and maturity, and by different packs;

(2) Supply of sweet onions by grade, size, quality, maturity, and variety in the production area and in other sweet onion producing sections;

(3) The trend and level of consumer income;

(4) Establishing and maintaining orderly marketing conditions for Walla Walla Sweet Onions;

(5) Orderly marketing of Walla Walla Sweet Onions as will be in the public interest; and

(6) Other relevant factors.

(b) *Reports.* (1) The committee shall submit a report to the Secretary setting forth the aforesaid marketing policy, and the committee shall notify producers and handlers of the contents of such report.

(2) In the event it becomes advisable to shift from such marketing policy because of changed supply and demand conditions, the committee shall prepare an amended or revised marketing policy in accordance with the manner previously outlined. The committee shall submit a report thereon to the Secretary and notify producers and handlers of the contents of such report on the revised or amended marketing policy.

5. Section 956.62 is revised to read as follows:

§ 956.62 Issuance of regulations.

(a) Except as otherwise provided in this part, the Secretary shall limit the shipment of Walla Walla Sweet Onions by any one or more of the methods hereinafter set forth whenever the Secretary finds from the recommendations and information submitted by the committee, or from other available information, that such regulation would tend to effectuate the declared policy of the Act. Such limitation may:

(1) Regulate in any or all portions of the production area, the handling of particular grades, sizes, qualities, or maturities of any or all varieties of Walla Walla Sweet Onions, or combinations thereof, during any period or periods;

(2) Regulate the handling of particular grades, sizes, qualities, or maturities of Walla Walla Sweet Onions differently, for different varieties or packs, or for any combination of the foregoing, during any period or periods;

(3) Provide a method, through rules and regulations issued pursuant to this part, for fixing the size, capacity, weight, dimensions, markings or pack of the container or containers, which may be used in the packaging or handling of Walla Walla Sweet Onions, including appropriate logo or other container markings to identify the contents thereof;

(4) Regulate the handling of Walla Walla Sweet Onions by establishing, in terms of grades, sizes, or both, minimum standards of quality and maturity.

(b) The Secretary may amend any regulation issued under this part whenever the Secretary finds that such amendment would tend to effectuate the declared policy of the Act. The Secretary may also terminate or suspend any regulation or amendment thereof whenever the Secretary finds that such regulation or amendment obstructs or no longer tends to effectuate the declared policy of the Act.

6. Section 956.64 is revised to read as follows:

§ 956.64 Minimum quantities.

During any period in which shipments of Walla Walla Sweet Onions are regulated pursuant to this part, each handler may handle up to, but not to exceed, 2,000 pounds of Walla Walla Sweet Onions per shipment without regard to the inspection requirements of this part: *Provided*, That such Walla Walla Sweet Onion shipments meet the minimum requirements in effect at the time of the shipment pursuant to § 956.62. The committee, with the approval of the Secretary, may recommend modifications to this section and the establishment of such other minimum quantities below which Walla Walla Sweet Onion shipments will be free from the requirements in, or pursuant to, §§ 956.42, 956.62, 956.63, and 956.70, or any combination thereof.

7. In part 956, a new center heading and § 956.70 are added to read as follows:

Inspection

§ 956.70 Inspection and certification.

(a) During any period in which shipments of Walla Walla Sweet Onions are regulated pursuant to this subpart, no handler shall handle Walla Walla Sweet Onions unless such onions are inspected by an authorized representative of the Federal-State Inspection Service, or such other inspection service as the Secretary shall designate and are covered by a valid

inspection certificate, except when relieved from such requirements pursuant to §§ 956.63 or 956.64, or both. Upon recommendation of the committee, with approval of the Secretary, inspection providers and certification requirements may be modified to facilitate the handling of Walla Walla Sweet Onions.

(b) Regrading, resorting, or repacking any lot of Walla Walla Sweet Onions shall invalidate prior inspection certificates insofar as the requirements of this section are concerned. No handler shall ship Walla Walla Sweet Onions after they have been regraded, resorted, repacked, or in any other way further prepared for market, unless such onions are inspected by an authorized representative of the Federal-State Inspection Service, or such other inspection service as the Secretary shall designate: *Provided,* That such inspection requirements on regraded, resorted, or repacked Walla Walla Sweet Onions may be modified, suspended, or terminated under rules and regulations recommended by the committee, and approved by the Secretary.

(c) Upon recommendation of the committee, and approval of the Secretary, all Walla Walla Sweet Onions that are required to be inspected and certified in accordance with this section shall be identified by appropriate seals, stamps, tags, or other identification to be furnished by the committee and affixed to the containers by the handler under the direction and supervision of the Federal-State or Federal inspector, or the committee. Master containers may bear the identification instead of the individual containers within said master container.

(d) Insofar as the requirements of this section are concerned, the length of time for which an inspection certificate is valid may be established by the committee with the approval of the Secretary.

(e) When Walla Walla Sweet Onions are inspected in accordance with the requirements of this section, a copy of each inspection certificate issued shall be made available to the committee by the inspection service.

(f) The committee may enter into an agreement with an inspection service with respect to the costs of the inspection as provided by paragraph (a) of this section, and may collect from handlers their respective pro rata shares of such costs.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 314 and 320

[Docket No. 98N–0778]

Bioavailability and Bioequivalence Requirements; Abbreviated Applications; Proposed Revisions

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to revise its regulations on bioavailability and bioequivalence and on the content and format of an abbreviated application to reflect current FDA policy and to correct certain typographical and inadvertent errors. This action is intended to improve the accuracy and clarity of the regulations.

DATES: Written comments by February 2, 1999. FDA proposes that any final rule based on this proposal become effective 60 days after its date of publication in the **Federal Register**.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Christine F. Rogers, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

FDA regulations require persons submitting a new drug application (NDA) to provide bioavailability information (21 CFR 314.50(c)(2)(vi) and (d)(3)), and persons submitting an abbreviated new drug application (ANDA) or abbreviated antibiotic application (AADA) to provide information pertaining to bioavailability and bioequivalence (§ 314.94(a)(7) and (d)(3) (21 CFR 314.94(a)(7) and (d)(3))).

FDA regulations in part 320 (21 CFR part 320) establish definitions and requirements for bioavailability and bioequivalence studies. FDA finalized the bioavailability and bioequivalence regulations on January 7, 1977 (42 FR 1624), and amended these regulations on April 28, 1992 (57 FR 17950). The 1992 amendments were designed to reflect statutory changes resulting from the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417).

Bioavailability, in general, refers to the rate and extent to which the active ingredient or active moiety is absorbed from a drug product and becomes available at the site of action. For drug products that are not intended to be absorbed into the bloodstream, bioavailability may be assessed by measurements intended to reflect the rate and extent to which the active ingredient or active moiety becomes available at the site of action (§ 320.1(a)). Bioequivalence, in general, refers to the absence of a significant difference in the rate and extent to which the active ingredient or active moiety in pharmaceutical equivalents or pharmaceutical alternatives becomes available at the site of drug action when administered at the same molar dose under similar conditions in an appropriately designed study. Where there is an intentional difference in rate (e.g., in certain controlled release dosage forms), certain pharmaceutical equivalents or alternatives may be considered bioequivalent if there is no significant difference in the extent to which the active ingredient or moiety from each product becomes available at the site of drug action (§ 320.1(e)).

II. Description of the Proposed Rule

The proposed rule would revise FDA regulations pertaining to abbreviated applications, bioavailability, and bioequivalence to reflect current agency policy, to correct typographical and inadvertent errors, and to clarify existing provisions. The proposed amendments follow.

Section 314.94(a)(9) establishes information requirements for the chemistry, manufacturing, and controls section of an abbreviated application. Section 314.94(a)(9) provides that an abbreviated application may have different inactive ingredients than the reference listed drug as long as the applicant identifies and characterizes the inactive ingredients in the proposed drug product and provides information demonstrating that the inactive ingredients do not affect the safety of the drug product. The proposed rule would amend this section to recognize the possibility that the use of different inactive ingredients may also affect a product's efficacy.

Section 314.94(a)(9)(v) establishes the requirements for inactive ingredient changes permitted in drug products intended for topical use. The proposed rule would revise this section to include solutions for aerosolization or nebulization as well as nasal solutions. This change is intended to clarify that these solutions may be characterized as drug products intended for topical use.

Section 314.127 (21 CFR 314.127) sets forth the reasons why FDA would refuse to approve an ANDA. The proposed rule would revise § 314.127(a)(8) to clarify that, consistent with current FDA policy, the applicant must show that different inactive ingredients would not affect a product's efficacy, in addition to the currently required showing for safety. This revision is necessary because a change in inactive ingredients may affect safety or efficacy or both. As the agency stated in the preamble to the proposed rule implementing the Drug Price Competition and Patent Term Restoration Act of 1984, ''[i]t is well established that changing the inactive ingredients in a drug can adversely affect the drug's safety or effectiveness.'' (See 54 FR 28872 at 28902, July 10, 1989.) For example, an inactive ingredient that increases or decreases an active ingredient's efficacy may affect the safety of the drug product as well. If a drug is not achieving its therapeutic purpose, the drug may be unsafe for use. An ineffective drug may cause a patient to unwittingly delay effective treatment. Thus, safety and effectiveness are, to a great extent, intertwining principles.

Section 320.1(c) defines ''pharmaceutical equivalents'' as:

> * * * drug products that contain identical amounts of the identical active drug ingredient, i.e., the same salt or ester of the same therapeutic moiety, in identical dosage forms, but not necessarily containing the same inactive ingredients, and that meet the identical compendial or other applicable standard of identity, strength, quality, and purity, including potency and, where applicable, content uniformity, disintegration times and/or dissolution rates.

This definition has been the source of some confusion with regard to certain modified release systems, prefilled syringes, and other drug products that contain a reservoir that facilitates delivery or where residual volume may vary. In such products, the agency does not consider the amount that facilitates the action of the delivery system, but by design is not intended to be delivered to the site of drug action or to have any direct therapeutic effect, to be ''active ingredient'' for the purposes of evaluating the pharmaceutical equivalence of a drug product.

Therefore, to clarify the definition of ''pharmaceutical equivalents'' with regard to certain drug products such as prefilled syringes and those that use modified release systems, the agency is proposing to revise the definition of ''pharmaceutical equivalents'' in § 320.1(c) to state:

> * * * drug products in identical dosage forms that contain identical amounts of the identical active drug ingredient, i.e., the same salt or ester of the same therapeutic moiety or, in the case of modified release dosage forms that require a reservoir or overage or such forms as prefilled syringes where residual volume may vary, that deliver identical amounts of the active drug ingredient over the identical dosing period; do not necessarily contain the same inactive ingredients; and meet the identical compendial or other applicable standard of identity, strength, quality, and purity, including potency and, where applicable, content uniformity, disintegration times, and/or dissolution rates.

Subpart B of part 320 describes procedures for determining the bioavailability or bioequivalence of drug products, and refers to evidence that ''demonstrates'' in vivo bioavailability and bioequivalence. The proposed rule would modify current §§ 320.21, 320.22, 320.23, 320.24, and 320.25 to clarify that although bioequivalence may be ''demonstrated'' or ''established,'' bioavailability can only be ''measured.'' These verb changes also require that the words ''in vivo'' precede the word ''bioequivalence.''

Section 320.21 sets forth the requirements for submission of in vivo bioavailability and bioequivalence data. Section 320.21(b)(1) provides that any person submitting an abbreviated application must submit evidence demonstrating that the proposed drug product is bioequivalent to the reference listed drug or, under § 320.21(b)(2), provide ''[i]nformation to show that the drug product is bioequivalent to the reference listed drug which would permit FDA to waive the submission of evidence demonstrating bioequivalence * * *.'' The proposed rule would revise § 320.21(b)(2) to clarify that the waiver would only pertain to the submission of evidence demonstrating the in vivo determination of bioequivalence.

Section 320.21(c)(1) provides that any person submitting a supplemental application to FDA must provide evidence or information regarding the product's bioavailability or bioequivalence if the supplemental application proposes ''[a] change in the manufacturing process, including a change in product formulation or dosage strength, beyond the variations provided for in the approved application.'' The proposed rule would amend this provision to include a change in the manufacturing site because such a change may affect the bioavailability or bioequivalence of the drug product because of equipment, personnel, or environmental changes.

Section 320.21(d) states that ''FDA may approve a full new drug application * * * that does not contain evidence of in vivo bioavailability or information to permit waiver of the requirement for in vivo bioavailability data,'' if, among other things, ''[t]he application was under review by FDA on July 7, 1977'' (§ 320.21(d)(1).) The agency is proposing to remove this paragraph because it has become outdated.

Section 320.21(f) inaccurately includes a reference to criteria set forth in § 320.24 as containing information under which FDA could waive the requirement for submission of evidence demonstrating in vivo bioavailability or bioequivalence. The proposed rule would replace the reference to § 320.24 with § 320.22.

Proposed § 320.22(a) would address another typographical error. Current § 320.22(a) states that ''[e]xcept as provided in paragraph (g) of this section,'' FDA shall waive the requirement for the submission of evidence of in vivo bioavailability or bioequivalence under certain conditions. The proposed rule would substitute paragraph (f) for the reference to paragraph (g).

Section 320.22(b) sets forth the criteria under which a drug product's in vivo bioavailability or bioequivalence may be considered self-evident based on other data in an application showing that the proposed drug product is identical in certain respects to the ''drug product that is the subject of an approved full new drug application'' (see § 320.22(b)(1)(ii), (b)(2)(ii), and (b)(3)(ii)). The proposed rule would replace ''approved full new drug application'' with ''approved full new drug application or abbreviated new drug application.'' This revision recognizes those instances when an approved abbreviated new drug application might be the reference listed drug because there is no approved full new drug application. The proposed rule would make a similar change to § 320.22(b)(3)(iii) because this provision also refers to a ''drug product that is the subject of the approved full new drug application * * *.''

Section 320.22(b)(3)(i) sets forth the criteria for waiver of the in vivo bioavailability or bioequivalence of a drug product that is ''a solution for application to the skin, an oral solution, elixir, syrup, tincture, or similar other solubilized form'' intended for either local or systemic effect. The proposed rule would amend § 320.22(b)(3)(i) to include a ''solution for aerosolization or nebulization'' and a ''nasal solution'' to clarify that ''similar other solubilized form'' includes solutions for aerosolization or nebulization and nasal solutions.

Section 320.22(c) provides that ''FDA shall waive the requirement for the submission of evidence demonstrating

the in vivo bioavailability of a solid oral dosage form (other than an enteric coated or controlled release dosage form) * * *'' unless, among other things, ''FDA has evaluated the drug product under the criteria set forth in § 320.32 * * *.'' The reference to § 320.32 is a typographical error. The proposed rule would refer to § 320.33 because the relevant criteria are found in that provision. In addition, the proposed rule would clarify that FDA may waive this requirement not only for the submission of evidence of in vivo bioavailability but also for the submission of evidence of in vivo bioequivalence.

The proposed rule would also amend § 320.22(c) because ''delayed release'' is the preferred terminology for ''enteric coated'' and ''extended release'' is the preferred terminology for ''controlled release.''

Under § 320.22(e), ''FDA, for good cause, may waive a requirement for the submission of evidence of in vivo bioavailability if waiver is compatible with the protection of the public health * * *.'' When the agency revised and finalized the regulations in 1992, it intended that § 320.22(e) clearly include waiver of in vivo bioequivalence testing, as the heading of the section suggests. Indeed, waiver of the submission of in vivo bioavailability data is related to waiver of in vivo bioequivalence testing in that bioequivalence is an assessment of comparative bioavailability. Because there may be some confusion about the scope of § 320.22(e), the proposed rule would clarify that FDA may, for good cause, waive not only the submission of evidence of in vivo bioavailability but also the submission of evidence of in vivo bioequivalence, if such a waiver is compatible with the protection of the public health. Such a waiver may be appropriate in cases where an abbreviated application uses inactive ingredients different from those in the reference listed drug (see § 314.94(a)(9)), and thus the other provisions regarding a waiver of a the requirement for the submission of evidence of in vivo bioavailability or bioequivalence do not apply. In such cases, a waiver of the submission of evidence of in vivo bioavailability or bioequivalence may, for good cause, be granted if compatible with the protection of the public health.

Section 320.24 sets forth the various types of evidence needed to establish bioavailability or bioequivalence. The agency is removing § 320.24(b)(1)(iii) because FDA does not encourage the use of animals in vivo bioavailability studies. Section 320.24(b)(5), which focuses on one method, in vitro testing, contains a typographical error, stating that the in vitro test acceptable to FDA is ''unusually a dissolution rate test.'' The proposed rule would replace ''unusually'' with ''usually.''

Section 320.25 provides guidelines for the conduct of an in vivo bioavailability study. Section 320.25(a)(2) provides that ''[a]n in vivo bioavailability study shall not be conducted in humans if an appropriate animal model exists and correlation of results in animals and humans has been demonstrated * * *.'' The agency is proposing to remove § 320.25(a)(2) because FDA does not encourage the use of animals in vivo bioavailability studies.

Section 320.25(d)(1) describes the purpose of a bioavailability study involving a drug product containing an active drug ingredient or therapeutic moiety that has not been approved for marketing. The agency has determined that § 320.25(d)(1) is inaccurate because it actually describes the purpose of a pharmacokinetic study, rather than a bioavailability study. Thus, the proposed rule would revise the introductory text of § 320.25(d)(1) to read ''An in vivo bioavailability study involving a drug product containing an active drug ingredient or therapeutic moiety that has not been approved for marketing can be used to measure the following pharmacokinetic data: * * *.''

Section 320.25(e)(1) describes the purpose of an in vivo bioavailability study involving a drug product that is a new formulation, a new dosage form, or a new salt or ester of an active drug ingredient or therapeutic moiety that has been approved for marketing. The agency has determined that § 320.25(e)(1) is inaccurate because it also describes the purpose of a pharmacokinetic study, not a bioavailability study. Thus, the proposed rule would revise the introductory text of § 320.25(e)(1) to read ''An in vivo bioavailability study involving a drug product that is a new formulation, a new dosage form, or a new salt or ester of an active drug ingredient or therapeutic moiety that has been approved for marketing can be used to: * * *.''

Section 320.26 provides guidance on the design of a single-dose in vivo bioavailability study, and § 320.27 provides guidance on the design of a multiple-dose in vivo bioavailability study. The proposed rule would add the word ''bioequivalence'' after ''bioavailability'' throughout these two sections because §§ 320.26 and 320.27 are also applicable to in vivo bioequivalence studies. This revision reflects current FDA policy. The proposed rule would also amend §§ 320.28 and 320.29 to include reference to bioequivalence because these sections are also applicable to in vivo bioequivalence studies.

The proposed rule would also amend § 320.26(b)(2)(i) by replacing ''three'' with ''five.'' The proposed rule would also insert the word ''active'' before ''metabolite(s)'' in §§ 320.26(b)(2)(i) and 320.27(b)(3)(i). FDA is proposing these revisions because the drug elimination period (wash-out period) of three times the half-life of the active drug ingredient or therapeutic moiety, or its active metabolite(s), is inadequate, and because current analytical methods exist that usually are capable of detecting drug concentrations after five times the half-life of the active drug ingredient or therapeutic moiety, or its active metabolite(s).

Section 320.27(d)(1) states that, for the collection of blood samples during multiple-dose in vivo bioavailability studies, the maximum (Cmax) and minimum (Cmin) values should be defined on 2 or more consecutive days to establish that steady-state conditions are achieved. FDA no longer uses Cmax values in the determination of steady-state conditions and, in some cases, the predose trough level may not be the observed Cmin value. In addition, FDA recommends that sampling be done for at least 3 consecutive days. Therefore, the proposed rule would revise § 320.27(d)(1) to state:

> Whenever comparison of the test product and the reference material is to be based on blood concentration-time curves at steady-state, sufficient samples of blood should be taken to define adequately the predose blood concentration on 3 or more consecutive days to establish that steady-state conditions are achieved.

Section 320.27(d)(2) states that ''[w]henever comparison of the test product and the reference material is to be based on cumulative urinary excretion-time curves at steady-state, sufficient samples of urine should be taken to define the rate and extent of urinary excretion on 2 or more consecutive days to establish that steady-state conditions are achieved.'' For the reasons stated previously, the proposed rule would revise this paragraph to state:

> Whenever comparison of the test product and the reference material is to be based on cumulative urinary excretion-time curves at steady-state, sufficient samples of urine should be taken to define the rate and extent of urinary excretion on 3 or more consecutive days to establish that steady-state conditions are achieved.

Section 320.30(c)(1) directs inquiries on bioavailability to the Division of Biopharmaceutics in the Center for Drug Evaluation and Research. The proposal

would update the name of the Division of Biopharmaceutics because it is now called the ''Office of Clinical Pharmacology and Biopharmaceutics'' (HFD–850).

Section 320.30(c)(2) directs inquiries on bioequivalence requirements and methodology to the Division of Bioequivalence in the Center for Drug Evaluation and Research. The proposal would update the mailing address for the Division of Bioequivalence because it is now located at Metro Park North II, 7500 Standish Pl., Rockville, MD 20855–2773.

Section 320.31 discusses the applicability of the investigational new drug application requirements to certain bioavailability or bioequivalence studies. Although FDA intended that this section apply to bioavailability or bioequivalence studies, § 320.31(b) only refers to bioavailability studies. The proposal would insert the words ''or bioequivalence'' after the word ''bioavailability'' in the introductory text of § 320.31(b) to clarify that this section applies to bioequivalence studies as well.

Broader issues concerning FDA's interpretation and application of the regulations applicable to bioequivalence issues have recently been the subject of controversy. The ability to characterize and quantify the components of drug products has evolved and continues to evolve with advances in the science of analytical chemistry. A more refined characterization of a drug product may complicate determinations about the components or quantity of components that may affect the safety of the drug product or contribute to its pharmacological effect. Changes to definitional concepts such as active and inactive ingredients are beyond the scope of these, for the most part, technical revisions to the regulations. However, FDA intends to address such issues in a future proposal.

III. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages). Under the Regulatory Flexibility Act, unless an agency certifies that a rule will not have a significant impact on small entities, the agency must analyze regulatory options that would minimize the impact of the rule on small entities. Title II of the Unfunded Mandates Reform Act (Pub. L. 104–114) (in section 202) requires that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an expenditure in any 1 year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation).

The agency has reviewed this proposed rule and has determined that it is consistent with the regulatory philosophy and principles identified in Executive Order 12866, and these two statutes. With respect to the Regulatory Flexibility Act, the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Because the proposed rule does not impose any mandates on State, local, or tribal governments, or the private sector that will result in a 1-year expenditure of $100 million or more, FDA is not required to perform a cost-benefit analysis under the Unfunded Mandates Reform Act.

The proposed rule would amend the bioavailability and bioequivalence regulations to reflect current FDA policy.

IV. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed 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.

V. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Request for Comments

Interested persons may, on or before February 2, 1999, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

21 CFR Part 320

Drugs, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 314 and 320 be amended as follows:

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG OR AN ANTIBIOTIC DRUG

1. The authority citation for 21 CFR part 314 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 357, 371, 374, 379e.

2. Section 314.94 is amended in paragraph (a)(9)(ii) and the second sentence of paragraphs (a)(9)(iii) and (a)(9)(iv) by adding after the word ''safety'' the phrase ''or efficacy'' each time it appears, and by revising paragraph (a)(9)(v) to read as follows:

§ 314.94 Content and format of an abbreviated application.

* * * * *

(a) * * *

(9) * * *

(v) *Inactive ingredient changes permitted in drug products intended for topical use.* Generally, a drug product intended for topical use, solutions for aerosolization or nebulization, and nasal solutions shall contain the same inactive ingredients as the reference listed drug identified by the applicant under paragraph (a)(3) of this section. However, an abbreviated application may include different inactive ingredients provided that the applicant identifies and characterizes the differences and provides information demonstrating that the differences do not affect the safety or efficacy of the proposed drug product.

* * * * *

§ 314.127 [Amended]

3. Section 314.127 *Refusal to approve an abbreviated new drug application* is amended in the introductory text of paragraph (a)(8)(ii)(A), and in paragraphs (a)(8)(ii)(B) and (a)(8)(ii)(C) by adding after the word ''safety'' the phrase ''or efficacy'' each time it appears.

PART 320—BIOAVAILABILITY AND BIOEQUIVALENCE REQUIREMENTS

4. The authority citation for 21 CFR part 320 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 355, 357, 371.

5. Section 320.1 is amended by revising paragraph (c) to read as follows:

§ 320.1 Definitions.

* * * * *

(c) *Pharmaceutical equivalents* means drug products in identical dosage forms that contain identical amounts of the identical active drug ingredient, i.e., the same salt or ester of the same therapeutic moiety, or, in the case of modified release dosage forms that require a reservoir or overage or such forms as prefilled syringes where residual volume may vary, that deliver identical amounts of the active drug ingredient over the identical dosing period; do not necessarily contain the same inactive ingredients; and meet the identical compendial or other applicable standard of identity, strength, quality, and purity, including potency and, where applicable, content uniformity, disintegration times, and/or dissolution rates.

* * * * *

6. Section 320.21 is amended by removing paragraph (d)(1) and redesignating paragraphs (d)(2) and (d)(3) as paragraphs (d)(1) and (d)(2), respectively, and by revising newly redesignated (d)(2)(i) and (d)(2)(ii); and by revising paragraphs (a)(1), (a)(2), (b)(1), (b)(2), (c)(1), (e), and (f), the introductory text of paragraph (g), and paragraphs (g)(2) and (h) to read as follows:

§ 320.21 Requirements for submission of in vivo bioavailability and bioequivalence data.

(a) * * *

(1) Evidence measuring the in vivo bioavailability of the drug product that is the subject of the application; or

(2) Information to permit FDA to waive the submission of evidence measuring in vivo bioavailability.

(b) * * *

(1) Evidence demonstrating that the drug product that is the subject of the abbreviated new drug application is bioequivalent to the reference listed drug (defined in § 314.3(b) of this chapter); or

(2) Information to show that the drug product is bioequivalent to the reference listed drug which would permit FDA to waive the submission of evidence demonstrating in vivo bioequivalence as provided in paragraph (f) of this section.

(c) * * *

(1) A change in manufacturing site as well as a change in the manufacturing process, including a change in product formulation or dosage strength, beyond the variations provided for in the approved application.

* * * * *

(d) * * *

(2) * * *

(i) Evidence measuring the in vivo bioavailability and demonstrating the in vivo bioequivalence of the drug product that is the subject of the application; or

(ii) Information to permit FDA to waive measurement of in vivo bioavailability.

(e) Evidence measuring the in vivo bioavailability and demonstrating the in vivo bioequivalence of a drug product shall be obtained using one of the approaches for determining bioavailability set forth in § 320.24.

(f) Information to permit FDA to waive the submission of evidence measuring the in vivo bioavailability or demonstrating the in vivo bioequivalence shall meet the criteria set forth in § 320.22.

(g) Any person holding an approved full or abbreviated new drug application shall submit to FDA a supplemental application containing new evidence measuring the in vivo bioavailability or demonstrating the in vivo bioequivalence of the drug product that is the subject of the application if notified by FDA that:

* * * * *

(2) There are data measuring significant intra-batch and batch-to-batch variability, e.g., plus or minus 25 percent, in the bioavailability of the drug product.

(h) The requirements of this section regarding the submission of evidence measuring the in vivo bioavailability or demonstrating the in vivo bioequivalence apply only to a full or abbreviated new drug application or a supplemental application for a finished dosage formulation.

7. Section 320.22 is amended by revising paragraph (a), the second sentence of paragraph (b), paragraphs (b)(1)(ii), (b)(2)(ii), (b)(3)(i), (b)(3)(ii), (b)(3)(iii), and (c), the introductory text of paragraph (d), paragraphs (d)(2)(i) and (d)(4)(i), and the first sentence of paragraph (e) to read as follows:

§ 320.22 Criteria for waiver of evidence of in vivo bioavailability or bioequivalence.

(a) Any person submitting a full or abbreviated new drug application, or a supplemental application proposing any of the changes set forth in § 320.21(c), may request FDA to waive the requirement for the submission of evidence measuring the in vivo bioavailability or demonstrating the in vivo bioequivalence of the drug product that is the subject of the application. An applicant shall submit a request for waiver with the application. Except as provided in paragraph (f) of this section, FDA shall waive the requirement for the submission of evidence of in vivo bioavailability or bioequivalence if the drug product meets any of the provisions of paragraphs (b), (c), (d), or (e) of this section.

(b) * * * FDA shall waive the requirement for the submission of evidence obtained in vivo measuring the bioavailability or demonstrating the bioequivalence of these drug products. * * *

(1) * * *

(ii) Contains the same active and inactive ingredients in the same concentration as a drug product that is the subject of an approved full new drug application or abbreviated new drug application.

(2) * * *

(ii) Contains an active ingredient in the same dosage form as a drug product that is the subject of an approved full new drug application or abbreviated new drug application.

(3) * * *

(i) Is a solution for application to the skin, an oral solution, elixir, syrup, tincture, a solution for aerosolization or nebulization, a nasal solution, or similar other solubilized form.

(ii) Contains an active drug ingredient in the same concentration and dosage form as a drug product that is the subject of an approved full new drug application or abbreviated new drug application; and

(iii) Contains no inactive ingredient or other change in formulation from the drug product that is the subject of the approved full new drug application or abbreviated new drug application that may significantly affect absorption of the active drug ingredient or active moiety.

(c) FDA shall waive the requirement for the submission of evidence measuring the in vivo bioavailability or demonstrating the in vivo bioequivalence of a solid oral dosage form (other than a delayed release or extended release dosage form) of a drug product determined to be effective for at least one indication in a Drug Efficacy Study Implementation notice or which is identical, related, or similar to such a drug product under § 310.6 of this chapter unless FDA has evaluated the drug product under the criteria set forth in § 320.33, included the drug product in the Approved Drug Products with Therapeutic Equivalence Evaluations List, and rated the drug product as

having a known or potential bioequivalence problem. A drug product so rated reflects a determination by FDA that an in vivo bioequivalence study is required.

(d) For certain drug products, bioavailability may be measured or bioequivalence may be demonstrated by evidence obtained in vitro in lieu of in vivo data. FDA shall waive the requirement for the submission of evidence obtained in vivo measuring the bioavailability or demonstrating the bioequivalence of the drug product if the drug product meets one of the following criteria:

* * * * *

(2) * * *

(i) The bioavailability of this other drug product has been measured;

* * * * *

(4) * * *

(i) The bioavailability of the other product has been measured; and

* * * * *

(e) FDA, for good cause, may waive a requirement for the submission of evidence of in vivo bioavailability or bioequivalence if waiver is compatible with the protection of the public health. * * *

* * * * *

8. Section 320.23 is amended by revising the section heading and the first sentence of paragraph (a)(1) to read as follows:

§ 320.23 Basis for measuring in vivo bioavailability or demonstrating bioequivalence.

(a)(1) The in vivo bioavailability of a drug product is measured if the product's rate and extent of absorption, as determined by comparison of measured parameters, e.g., concentration of the active drug ingredient in the blood, urinary excretion rates, or pharmacological effects, do not indicate a significant difference from the reference material's rate and extent of absorption. * * *

* * * * *

9. Section 320.24 is amended by revising the section heading and the first, second, and last sentences of paragraph (a), by removing paragraph (b)(1)(iii), by revising the first, second, and last sentences of paragraph (b)(4), paragraphs (b)(5) and (b)(6), and the introductory text of paragraph (c) to read as follows:

§ 320.24 Types of evidence to measure bioavailability or establish bioequivalence.

(a) Bioavailability may be measured or bioequivalence may be demonstrated by several in vivo and in vitro methods. FDA may require in vivo or in vitro testing, or both, to measure the bioavailability of a drug product or establish the bioequivalence of specific drug products. * * * The method used must be capable of measuring bioavailability or establishing bioequivalence, as appropriate, for the product being tested.

(b) * * *

(4) Well-controlled clinical trials that establish the safety and effectiveness of the drug product, for purposes of measuring bioavailability, or appropriately designed comparative clinical trials, for purposes of demonstrating bioequivalence. This approach is the least accurate, sensitive, and reproducible of the general approaches for measuring bioavailability or demonstrating bioequivalence. * * * This approach may also be considered sufficiently accurate for measuring bioavailability or demonstrating bioequivalence of dosage forms intended to deliver the active moiety locally, e.g., topical preparations for the skin, eye, and mucous membranes; oral dosage forms not intended to be absorbed, e.g., an antacid or radiopaque medium; and bronchodilators administered by inhalation if the onset and duration of pharmacological activity are defined.

(5) A currently available in vitro test acceptable to FDA (usually a dissolution rate test) that ensures human in vivo bioavailability.

(6) Any other approach deemed adequate by FDA to measure bioavailability or establish bioequivalence.

(c) FDA may, notwithstanding prior requirements for measuring bioavailability or establishing bioequivalence, require in vivo testing in humans of a product at any time if the agency has evidence that the product:

* * * * *

10. Section 320.25 is amended by removing paragraph (a)(2), by redesignating paragraph (a)(3) as paragraph (a)(2), and by revising paragraph (d)(1), the introductory text of paragraph (e)(1), and paragraph (e)(1)(i) to read as follows:

§ 320.25 Guidelines for the conduct of an in vivo bioavailability study.

* * * * *

(d) *Previously unmarketed active drug ingredients or therapeutic moieties.* (1) An in vivo bioavailability study involving a drug product containing an active drug ingredient or therapeutic moiety that has not been approved for marketing can be used to measure the following pharmacokinetic data:

* * * * *

(e) *New formulations of active drug ingredients or therapeutic moieties approved for marketing.* (1) An in vivo bioavailability study involving a drug product that is a new dosage form, or a new salt or ester of an active drug ingredient or therapeutic moiety that has been approved for marketing can be used to:

(i) Measure the bioavailability of the new formulation, new dosage form, or new salt or ester relative to an appropriate reference material; and

* * * * *

11. Section 320.26 is amended by revising the section heading and paragraphs (a)(1) and (b)(2)(i) to read as follows:

§ 320.26 Guidelines on the design of a single-dose in vivo bioavailability or bioequivalence study.

(a) *Basic principles.* (1) An in vivo bioavailability or bioequivalence study should be a single-dose comparison of the drug product to be tested and the appropriate reference material conducted in normal adults.

* * * * *

(b) * * *

(2) * * *

(i) At least five times the half-life of the active drug ingredient or therapeutic moiety, or its active metabolite(s), measured in the blood or urine; or

* * * * *

12. Section 320.27 is amended by revising the section heading, introductory text of paragraph (a)(3), paragraphs (d)(1), (d)(2), and (e)(3); and by adding in paragraph (b)(3)(i) the word ''active'' before the word ''metabolite(s),'' to read as follows:

§ 320.27 Guidelines on the design of a multiple-dose in vivo bioavailability or bioequivalence study.

(a) * * *

(3) A multiple-dose study may be required to determine the bioavailability or bioequivalence of a drug product in the following circumstances:

* * * * *

(d) *Collection of blood or urine samples.* (1) Whenever comparison of the test product and the reference material is to be based on blood concentration-time curves at steady-state, sufficient samples of blood should be taken to define adequately the predose blood concentration on 3 or more consecutive days to establish that steady-state conditions are achieved.

(2) Whenever comparison of the test product and the reference material is to be based on cumulative urinary excretion-time curves at steady-state, sufficient samples of urine should be taken to define the rate and extent of

urinary excretion on 3 or more consecutive days to establish that steady-state conditions are achieved.

* * * * *

(e) * * *

(3) Other methods based on valid scientific reasons should be used to determine the bioavailability or bioequivalence of a drug product having dose-dependent kinetics (nonlinear system).

* * * * *

13. Section 320.29 is amended by revising the section heading and paragraph (a) to read as follows:

§ 320.29 Analytical methods for an vivo bioavailability or bioequivalence study.

(a) The analytical method used in an in vivo bioavailability or bioequivalence study to measure the concentration of the active drug ingredient or therapeutic moiety, or its metabolite(s), in body fluids or excretory products, or the method used to measure an acute pharmacological effect shall be demonstrated to be accurate and of sufficient sensitivity to measure, with appropriate precision, the actual concentration of the active drug ingredient or therapeutic moiety, or its metabolite(s), achieved in the body.

* * * * *

14. Section 320.30 is amended by revising paragraph (c) to read as follows:

§ 320.30 Inquiries regarding bioavailability and bioequivalence requirements and review of protocols by the Food and Drug Administration.

* * * * *

(c)(1) General inquiries relating to in vivo bioavailability requirements and methodology shall be submitted to the Food and Drug Administration, Center for Drug Evaluation and Research, Office of Clinical Pharmacology and Biopharmaceutics (HFD–850), 5600 Fishers Lane, Rockville, MD 20857.

(2) General inquiries relating to bioequivalence requirements and methodology shall be submitted to the Food and Drug Administration, Center for Drug Evaluation and Research, Division of Bioequivalence (HFD–650), 7500 Standish Pl., Rockville, MD 20855–2773.

§ 320.31 [Amended]

15. Section 320.31 *Applicability of requirements regarding an ''Investigational New Drug Application* is amended in the introductory text of paragraph (b) by adding after the word ''bioavailability'' the phrase ''or bioequivalence''.

Dated: November 5, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–30880 Filed 11–18–98; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WA 67–7142b; FRL–6188–2]

Approval and Promulgation of State Implementation Plans: Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Washington for the purpose of including a variance to a permit issued to the U.S. Army for the operation of three heat recovery incinerators located at Fort Lewis by local air pollution control agency, the Puget Sound Air Pollution Contol Agency (PSAPCA). In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received in writing by December 21, 1998.

ADDRESSES: Written comments should be addressed to Montel Livingston, Environmental Protection Specialist (OAQ–107), Office of Air Quality, at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 10, Office of Air Quality, 1200 6th Avenue, Seattle, WA 98101

The Washington State Department of Ecology, Air Quality Program, 300 Desmond Drive, Lacey, WA 98503

FOR FURTHER INFORMATION CONTACT: Mahbubul Islam, Office of Air Quality (OAQ–107), EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 553–6985.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

Dated: November 3, 1998.

Jane S. Moore,

Acting Regional Administrator, Region 10.

[FR Doc. 98–30848 Filed 11–18–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[I.D. 110998A]

Regulations Governing the Taking and Importing of Marine Mammals; Threatened Fish and Wildlife; Cook Inlet Beluga Whales

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

ACTION: Notice of intent to conduct a status review and request for information.

SUMMARY: NMFS is initiating a status review of the Cook Inlet beluga whale (*Delphinapterus leucas*) to determine whether designation under the Marine Mammal Protection Act (MMPA) or a change in listing classification under the Endangered Species Act (ESA) is warranted. NMFS intends to undertake the review in conjunction with the Alaska Beluga Whale Committee and the Cook Inlet Marine Mammal Council. The review will give consideration to the current status of Cook Inlet belugas, their distribution, abundance and trends, food habits, biohealth parameters, and reproductive parameters. The effects of the Native subsistence harvest, and the potential effects of other humanly induced impacts, as well as beluga natural mortality will also be examined. To ensure that the review is comprehensive, NMFS is requesting that interested parties submit pertinent information and comments regarding

the status of the Cook Inlet beluga whale.

DATES: Comments and information must be received by January 19, 1999.

ADDRESSES: Comments and information should be addressed to Chief, Marine Mammal Division (PR2), Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Steve Zimmerman, Protected Resources Management Division, Alaska Region, NMFS, (907) 586–7235; Brad Smith/Barbara Mahoney, Protected Resources Management Division, Alaska Region, NMFS, (907) 271–5006; or Margot Bohan, Office of Protected Resources, NMFS (301) 713–2322.

SUPPLEMENTARY INFORMATION: Section 4 of the ESA and 50 CFR part 424 contain provisions that allow the Secretary of Commerce (Secretary) to add to or change the species' listing classification on the U.S. List of Endangered and Threatened Wildlife when necessary. MMPA section 115 contains similar provisions regarding determinations on the status of species pursuant to the MMPA. Currently, the Cook Inlet beluga whale is on the candidate species list under the ESA. The candidate species list serves to notify the public that NMFS has concerns regarding the species that may warrant an ESA threatened or endangered listing in the future. Ideally, the candidate list facilitates voluntary conservation efforts prior to a need for listing under the ESA. If the Secretary determines that there is substantial scientific or commercial information to indicate that a change in listing classification may be warranted, a status review is conducted. NMFS intends to undertake a review of the Cook Inlet population of beluga whales in collaboration with the Alaska Beluga Whale Committee and the Cook Inlet Marine Mammal Council.

Background

Beluga whales are a circumpolar species. They are found in the waters of Canada, Alaska, Russia, Norway and Greenland. In Alaska, five populations are currently recognized and are found seasonally in (1) the Beaufort Sea, (2) the eastern Chukchi Sea, (3) the eastern Bering Sea, (4) Bristol Bay; and (5) Cook Inlet.

The Cook Inlet belugas make up a small, geographically isolated remnant population. In fact, the habitat range used by belugas in Cook Inlet appears to be decreasing. At present, the animals seem to concentrate near river mouths in the northern part of the inlet during much of the year. Limited sightings have occurred elsewhere in the recent past.

Because Cook Inlet belugas are geographically isolated, perturbations that are humanly-induced could have a dramatic effect on the population. The summer concentrations of this beluga population are exposed to the largest industrialized coastal area and to the largest human component in Alaska.

NMFS data indicate that the Cook Inlet population may also be declining in number. There are thought to be approximately 500 beluga whales in Cook Inlet, based on data collected between 1994 and 1998. The index count from the 1998 survey was the lowest reported to date and demonstrates a downward trend that has been ongoing over the last 4 years.

An increasing amount of information has revealed serious threats to this population. With its currently estimated rates of natural mortality and Native harvest, there is concern that the beluga population in Cook Inlet cannot be sustained by annual recruitment. Specifically, there is concern that Native subsistence harvests are exceeding sustainable removal levels. NMFS believes that maintaining a healthy beluga population and ensuring the long-term sustainability of a beluga whale subsistence harvest in Cook Inlet is in the best interest of all parties concerned. However, if present harvest levels continue to greatly exceed recruitment, the beluga whale population in Cook Inlet could become severely depleted in the foreseeable future. Effective actions must be developed and implemented soon to address such pressing conservation and management issues.

In light of these factors, NMFS is initiating a formal and comprehensive review of the status of the Cook Inlet beluga whale through a cooperative process with the Alaska Beluga Whale Committee and the Cook Inlet Marine Mammal Council. NMFS will obtain the best available information regarding the population's condition and sustainability to determine whether it warrants a depleted designation under the MMPA or a threatened or endangered listing under the ESA, or both.

Biological Information Solicited

To ensure that the review is comprehensive and is based on the best available data, NMFS is soliciting information and comments from any interested person concerning the status of Cook Inlet beluga whales. It is requested that data, information, and comments be accompanied by (1) supporting documentation, such as maps, logbooks, bibliographic references, personal notes, or reprints of pertinent publications and (2) the name of the person submitting the data, his/her address, and any association, institution, or business that the person represents.

Dated: November 12, 1998.

Ann D. Terbush,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–30833 Filed 11–18–98; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 63, No. 223

Thursday, November 19, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Members of Performance Review Boards

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This notice announces the appointment of members of the Performance Review Boards (PRBs) for the U.S. Department of Agriculture (USDA). The USDA PRBs provide fair and impartial review of Senior Executive Service (SES) performance appraisals and make recommendations to the Secretary of Agriculture, regarding final performance ratings, performance awards, pay adjustments and Presidential Rank Awards for SES members.

EFFECTIVE DATE: November 19, 1998.

FOR FURTHER INFORMATION CONTACT: Barbara Holland, Office of Human Resources Management, Executive Resources and Services Division, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Washington, DC 20250, (202) 720–6047.

SUPPLEMENTARY INFORMATION: The publication of PRB membership is required by Section 4314(c)(4) of Title 5, U.S.C. The following membership list represents a standing register, from which specific PRBs will be constituted.

Ackerman, Kenneth D.
Acord, Bobby R.
Adams, Charles R.
Ahl, Alwynelle S.
Aldaya, George W.
Allen, Richard Dean
Amontree, Thomas S.
Anand, Rajen S.
Anderson, Margot H.
Andre, Pamela Q.
Army, Thomas J.
Arnold, Richard W.
Arnoldi, Joan M.
Arthur, John B.
Ashworth, Warren R.
Atienza, Mary E.
Baker, James Robert
Bange, Gerald A.
Barrett, Jr., Fred S.
Bartuska, Ann M.
Bateman, Victoria L.
Bay, Donald M.
Beck, Richard H.
Bell, Theodore O.
Bensey, Jr., Roger L.
Berg, Joel S.
Bernhard, Ronald R.
Betschart, Antoinette A.
Beyer, Wally
Billy, Thomas J.
Blackburn, Wilbert H.
Blackwell, Jack A.
Blanks, Jacqueline J.
Bosecker, Raymond Ronald
Bosworth, Dale N.
Bottum, John S.
Braley, George A.
Breeze, Roger
Bresnick, Arnold
Bryant, Arthur Ray
Buisch, William W.
Buntain, Bonnie J.
Burns, Denver P.
Burse, Sr., Luther
Burt, John P.
Campbell, Arthur C.
Carey, Ann E.
Carey, Priscilla B.
Carlin, David J.
Carpenter, Barry L.
Chambliss, Mary T.
Cherry, John P.
Cielo, Angel B.
Clark, Lawrence E.
Clayton, Kenneth C.
Cohen, Kenneth E.
Collins, Keith J.
Comanor, Joan M.
Conrad, Virgil L.
Conway, Roger K.
Conway, Thomas V.
Cooksie, Carolyn B.
Cooper, George E.
Coulter, Kyle Jane
Cruz, Jose
Davis, Harold W.
Dedrick, Allen R.
Dehaven, W. Ron
Delgado, Linda A.
Derfler, Philip S.
Dewhurst, Stephen B.
Dombeck, Michael P.
Donoghue, Linda R.
Dooms, Elnora C.
Douglas, Jr., Frederick C.
Drazek, Paul A.
Duncan, Charles N.
Duncan, III, John P.
Dunkle, Richard L.
Dunn, Michael V.
Eav, Bov Bang
Ebbitt, James R.
Elder, Alfred S.
Elias, Thomas S.
Ellis, Joanne H.
Estill, Elizabeth
Evans, Gary R.
Evans, Reba P.
Figueroa, Enrique E.
Fleischman, Joyce N.
Forsgren, II, Harvey L.
Fowler, Jerry L.
Franco, Robert
Franks, Jr., William Jesse
Frazier, Gregory
Frost, Alberta C.
Gadt, Larry O.
Galvin, Timothy J.
Gardner, Jr., William Earl
Geasler, Mitchell Ray
Gelburd, Diane E.
Gillam, Bertha C.
Gippert, Michael J.
Gipson, Chester A.
Glavin, Margaret Agnes
Goerl, Vincette L.
Golden, John
Gonzales, Miley I.
Gray, Rosalind D.
Graybeal, Nancy
Greene, Frank C.
Greenshields, Bruce L.
Grundeman, Arnold James
Gugulis, Katherine C.
Guldin, Richard W.
Hagy, III, William F.
Hall, David C.
Hamilton, Thomas E.
Hardy, Jr., Leonard
Harrington, Jr., Rube
Harris, Sharron L.
Harris, Jr., David H.
Hatamiya, Lon S.
Hatcher, Charles F.
Havlik, William J.
Hayes, Paula F.
Healy, Patricia E.
Hefferan, Colien J.
Hellickson, Key Sandra
Henneberry, Thomas J.
Hernandez, Humberto
Hewings, Adrianna D.
Hicks, Ronald F.
Hicks, Vicki J.
Hill, Ronald W.
Hobbie, Mary Kyle
Hobbs, Alma C.
Hobbs, Ira L.
Holbrook, David M.
Holman, Pred Dwight
Horn, Floyd P.
Horner, Withers G.
House, Carol C.
Hudnall, Jr., William J.
Humiston, Glenda
Jackson, Ruthie F.
Jacobs, Robert T.
Jakub, Lawrence M.
Janik, Philip J.
Jennings, Allen L.
Johnsen, Peter B.
Johnson, Allan S.
Johnson, Judith K.
Johnson, Phyllis E.

Jordan, John P.
Joslin, Robert C.
Jung, Christine M.
Kaiser, Jr., Harold F.
Kaplan, Dennis L.
Kearney, James
Keefe, Mary Ann
Keeney, Robert C.
Keith, Roderick
Kelly, James Michael
Kelly, Keith
Kelly, Michael W.
Kennedy, Anne Keys
Kennedy, Eileen T.
King, Alexander
King, Janet C.
King, R. Alan
King, Jr., Edgar G.
Knipling, Edward B.
Koopman, Robert B.
Kronenberger, Jr., Donald R.
Kuhn, Betsey A.
Laster, Danny B.
Laverty, Jr., Robert L.
Lee, Warren M.
Leo, Joseph J.
Leonhardt, Barbara A.
Lewis, David N.
Lewis, Jr., Robert
Lilja, Janice Grassmuck
Linden, Ralph A.
Little, James R.
Long, Richard D.
Ludwig, William E.
Lugo, Ariel E.
Lyons, James R.
Macias, Cheryl L.
Maloney, Kathryn P.
Manning, Gloria
Margheim, Gary A.
Martin, Christopher J.
Martinez, Wilda H.
Matz, Deborah
Maupin, Gary T.
Mausbach, Maurice J.
Mazie, Sara M.
McCutcheon, John W.
McDougle, Janice H.
McKee, Richard M.
McLean, Christopher A.
Mengeling, William L.
Mezainis, Valdis E.
Miller, Charles R.
Mills, Thomas J.
Mina, Mark T.
Moore, Eddie A.
Murrell, Kenneth D.
Nelson, Stephen F.
Nervig, Robert M.
Newman, Richard Odell
Ng, Allen
Nordstrom, Gary R.
Novak, Jon E.
O'Brien, Patrick Michael
Oberlander, Herbert
Offutt, Susan E.
Ohler, Barry A.
Olsen, Eric N.
O'Neil, Barbara T.
Onstad, Charles A.
Orr, David M.
Ortego, John R.
Osgood, Barbara T.
Otto, Ralph A.
Pandolfi, Francis P.
Paradis, Julia M.
Parham, Gregory L.
Parry, Jr., Richard M.
Pearson, James E.
Peer, Wilbur T.
Perry, James P.
Perry, Joan B.
Potts, Janet S.
Powers, Judy M.
Prchal, Robert J.
Prucha, John C.
Purcell, Robert L.
Pytel, Christine
Rains, Michael T.
Rawls, Charles R.
Read, Hershel R.
Reed, Anne F.T.
Reed, Craig A.
Reed, Pearlie S.
Reilly, Joseph T.
Rexroad, Jr., Caird E.
Reynolds, James R.
Rhoades, James D.
Riemenschneider, Robert A.
Riggins, Judith W.
Risbrudt, Christopher D.
Robinson, Bobby H.
Rockey, Sarah J.
Rominger, Richard E.
Roussopoulos, Peter J.
Rundle, Kathleen A.
Salwasser, Harold James
Satterfield, Steven E.
Scarbrough, Frank E.
Schipper, Jr., Arthur L.
Schroeder, James W.
Schumacher, Jr., August
Schwalbe, Charles P.
Sells, Danny DeVault
Sesco, Jerry A.
Sexton, Thomas J.
Seymour, Carol M.
Shackelford, Parks D.
Shadburn, Jan E.
Shands, Henry L.
Sheikh, Patricia R.
Shipman, David R.
Siddiqui, Islam A.
Simmons, Robert M.
Skeen, David
Smith, Dallas R.
Smith, Horace
Smith, Katherine R.
Smith, Peter Francis
Smith, Jr., William C.
Smulkstys, Inga P.
Smythe, Richard V.
Sommers, William T.
Soper, Jr., Richard S.
Sparks, John E.
Spence, Joseph
Spory, Gene P.
Sprague, G. Lynn
St. John, Judith B.
Steel, Patrick M.
Steele, W. Scott
Stenger-Castro, Frank W.
Stewart, Ronald E.
Stockton, Jr., Blaine D.
Stolfa, Patricia F.
Stommes, Eileen S.
Surina, John C.
Tanner, Steven N.
Thomas, Irving W.
Thompson, Clyde
Thompson-Long, Jill L.
Thompson, Paul E.
Thompson, Robin L.
Thornton, Samuel E.
Torgerson, Randall E.
Torres, Alfonso
Towns, Eleanor R.
Vail, Kenneth H.
Valsing, D. Charles
Van Klaveren, Richard W.
Vasquez, Jr., Victor
Verble, Sedelta D.
Viadero, Roger C.
Vogel, Frederic A.
Vogel, Ronald J.
Vonk, Jeffrey Ronald
Wachs, Lawrence
Wachsmuth, Ina K.
Walker, Elijah C.
Walker, Larry A.
Walsh, Thomas M.
Walton, Thomas E.
Watkins, Dayton J.
Watkins, Shirley R.
Weber, Barbara C.
Weber, Thomas A.
West, William L.
Whillock, Carl S.
White, Barbara A.
White, Jr., T. Kelley
Whiteman, Glenn D.
Whiting, Robert W.
Whitmore, Charles
Wilcox, Caren A.
Williams, John W.
Williams, Robert W.
Williamson, Robert L.
Willis, Joyce C.
Wilson, Edward M.
Witt, Timothy Blaine
Woteki, Catherine E.
Wu, Jeremy S.
Young, Jr., Robert W.
Zellers, Phillip
Zorn, Frances E.

Dated: November 12, 1998.

Richard E. Rominger,

Deputy Secretary.

[FR Doc. 98–30904 Filed 11–18–98; 8:45 am]

BILLING CODE 3410–96–M

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Federal Invention Available for Licensing and Intent to Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of availability and intent.

SUMMARY: Notice is hereby given that a Federally owned invention U.S. Serial No. 08/788,604, filed January 24, 1997, entitled ''Methods and Compositions for the Simultaneous Control of Root Diseases Caused by Gaeumannomyces Graminis, Rhizoctonia, and Pythium'' is available for licensing and the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Green-Releaf BioTech, Inc., of

Jacksonville, Florida, an exclusive license to Serial No. 08/788,604.

DATES: February 17, 1999.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, Room 415, Building 005, BARC-West, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Green-Releaf BioTech, Inc., has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within ninety (90) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 98–30905 Filed 11–18–98; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 98–112–1]

Availability of an Environmental Assessment and Finding of No Significant Impact for Field Testing Marek's Disease Vaccine, Serotypes 1 and 3, Live Marek's Disease Virus Vector

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment and finding of no significant impact concerning authorization to ship for the purpose of field testing, and then to field test, an unlicensed live viral Marek's disease vaccine for use in poultry. A risk analysis, which forms the basis for the environmental assessment, has led us to conclude that field testing this veterinary vaccine will not have a significant impact on the quality of the human environment. Based on our finding of no significant impact, we have determined that an environmental impact statement need not be prepared. We intend to authorize shipment of this vaccine for field testing 14 days after the date of this notice, unless new, substantial issues bearing on the effects of this action are brought to our attention. We also intend to issue a veterinary biological product license for this vaccine, provided the field test data support the conclusions of the environmental assessment and finding of no significant impact and the product meets all other requirements for licensure.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact may be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the docket number, date, and complete title of this notice when requesting copies. Copies of the environmental assessment and finding of no significant impact (as well as the risk analysis with confidential business information removed) are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Jeanette Greenberg, Technical Writer-Editor, Center for Veterinary Biologics, Licensing and Policy Development, VS, APHIS, USDA, 4700 River Road Unit 148, Riverdale, MD 20737–1231; telephone (301) 734–5338; fax (301) 734–4314; or e-mail: Jeanette.B.Greenberg@usda.gov.

SUPPLEMENTARY INFORMATION: Under the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*), a veterinary biological product must be shown to be pure, safe, potent, and efficacious before a veterinary biological product license may be issued. A field test is generally necessary to satisfy prelicensing requirements for veterinary biological products. Prior to conducting a field test on an unlicensed product, an applicant must obtain approval from the Animal and Plant Health Inspection Service (APHIS), as well as obtain APHIS' authorization to ship the product for field testing.

In determining whether to authorize shipment and grant approval for the field testing of the unlicensed product referenced in this notice, APHIS conducted a risk analysis to assess the potential effects of this product on the safety of animals, public health, and the environment. Based on the risk analysis, APHIS has prepared an environmental assessment (EA). APHIS has concluded that field testing the unlicensed veterinary biological product will not significantly affect the quality of the human environment. Based on this finding of no significant impact (FONSI), we have determined that there is no need to prepare an environmental impact statement.

The EA and FONSI have been prepared by APHIS concerning the field testing of the following unlicensed veterinary biological product:

Requester: Tri Bio Laboratories, Inc.

Product: Marek's Disease Vaccine, Serotypes 1 and 3, Live Marek's Disease Virus Vector.

Field test locations: Wisconsin, North Carolina, and California.

The above-mentioned vaccine is for use as an aid in the prevention of Marek's disease in chickens. The vaccine contains live Marek's disease virus serotype 3 (which is nonpathogenic), into which were inserted three genes coding for glycoproteins from Marek's disease virus serotype 1.

The EA and FONSI have been prepared in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Unless substantial environmental issues are raised in response to this notice, APHIS intends to authorize shipment of the above product for the initiation of field tests 14 days from the date of this notice.

Because the issues raised by field testing and by issuance of a license are identical, APHIS has concluded that the EA and FONSI that were generated for field testing would also be applicable to the proposed licensing action. Provided that the field test data support the conclusions of the original EA and FONSI, APHIS does not intend to issue a separate EA to support the issuance of the product license, and would determine that an environmental impact statement need not be prepared. APHIS intends to issue a veterinary biological product license for this vaccine following completion of the field test provided no adverse impacts on the

human environment are identified and provided the product meets all other requirements for licensure.

Authority: 21 U.S.C. 151–159.

Done in Washington, DC, this 12th day of November 1998.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–30974 Filed 11–18–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Establishment of The Opal Creek Wilderness and Opal Creek Scenic Recreation Area, Willamette National Forest, Marion County, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice of establishment of a wilderness and scenic recreation area.

SUMMARY: Omnibus Parks and Public Lands Management Act of 1996, Pub. L. 104–333 (''Opal Creek Bill'') provides for the establishment of the Opal Creek Wilderness and Scenic Recreation Area upon a determination by the Secretary of Agriculture that specified conditions are met within two years of enactment. The Secretary has determined that the conditions have been met, and the Opal Creek Wilderness and Scenic Recreation Area can be established. A copy of the establishment document appears at the end of this notice.

EFFECTIVE DATE: November 9, 1998.

ADDRESSES: A copy of the map depicting the Opal Creek Wilderness and Scenic Recreation Area, as well as a written legal description, are on file and available for public inspection in Forest Supervisor's Office, Willamette National Forest, P.O. Box 10607, Eugene, Oregon 97440.

FOR FURTHER INFORMATION CONTACT: Steve Sorseth, Wilderness Coordinator, Willamette National Forest, P.O. Box 10607, Eugene, Oregon 97440, phone 541–465–6494.

Dated: November 12, 1998.

Kimberly E. Bown,

Acting Regional Forester.

Establishment of the Opal Creek Wilderness and Opal Creek Scenic Recreation Area

Recitals

A. Section 1023 of the Omnibus Parks and Public Lands Management Act of 1996, Pub. L. 104–333; 110 STAT. 4215–4224 (''Opal Creek Bill'') provides for the establishment of the Opal Creek Wilderness and Scenic Recreation Area upon a determination by the Secretary of Agriculture (Secretary) that specified conditions are met within two years of enactment [Opal Creek Bill, section 1023(c)(1)].

B. Pub. L. 104–333 was enacted November 12, 1996.

C. The conditions as specified in Opal Creek Bill section 1023(c)(2) are as follow:

1. The donation to the United States in acceptable condition and without encumbrance:

a. All right, title, and interest in the following patented parcels of land-Santiam Number 1, Mineral Survey Number 992, as described in patent number 39–92–0002, dated December 11, 1991; Ruth Quartz Mine Number 2, Mineral Survey number 994, as described in patent number 39–91–0012, dated February 12, 1991; Morning Star Lode, Mineral Survey Number 993, as described in patent number 36–91–0011, dated February 12, 1991;

b. All right, title, and interest held by any entity other than the Times Mirror Land and Timber Company, its successors and assigns in and to lands located in section 18, T. 8 S., R. 5 E., W.M., Marion County, Oregon, Eureka numbers 6, 7, 8 and 13 mining claims; and

c. An easement across the Hewitt, Starvation, and Poor Boy Mill Sites, Mineral Survey Number 990, as described in patent number 36–91–0017, dated May 9, 1991.

2. A binding agreement, in the form of a Purchase Option Contract, has been executed by the Secretary and the owners of record as of March 29, 1996, of the following interests, specifying the terms and conditions for the deposition of such interests to the United States Government:

a. The lode mining claims known as the Princess Lode, Black Prince Lode, and King Number 4 Lode, embracing portions of sections 29 and 32, T. 8 S., R. 5 E., W.M., Marion County, Oregon, the claims being more particularly described in the field notes and depicted on the plat of Mineral Survey Number 887, Oregon; and

b. Ruth Quartz Mine Number 1, Mineral Survey Number 994, as described in patent number 39–91–0012, dated February 12, 1991.

D. I have reviewed the record prepared by the Forest Service related to the real property described in Recital C, above.

Determinations

1. Based upon my review of the record, I make the following determinations on behalf of the Secretary:

a. The conditions described in Recital C1, above, were met when the Friends of Opal Creek donated the interests in real property described in Recital C1 to the United States in acceptable condition and without encumbrance in a Donation Deed dated October 23, 1998, and recorded in the Marion County, Oregon real property records on October 23, 1998, Reel 1534, Page 676, and a Right-of-Way Easement dated October 23, 1998 and recorded in the Marion County, Oregon real property records on October 23, 1998, Reel 1534, Page 675.

b. The condition of the binding agreement specifying the terms and conditions for the disposition of the real property interests described in Recital C2 was met by the Purchase Option and Contract (''Option'') signed by the Friends of Opal Creek on July 29, 1998 and accepted by the Forest Service, on behalf of the Secretary on September 29, 1998. The Friends of Opal Creek met the terms and conditions of the Option when it transferred the interests in real property described in Recital C.2. to the United States in a Warranty Deed dated October 23, 1998, Reel 1534, page 674.

Establishment

Based on the above Determinations and the provisions of the Opal Creek Bill:

1. The Opal Creek Wilderness is established, and includes certain land in the Willamette National Forest as generally depicted on the map entitled ''Proposed Opal Creek Wilderness and Scenic Recreation Area'' dated July 1996, as described in section 1023(a)(2) of the Opal Creek Bill. A copy of that map is attached as Exhibit 1.

2. The part of the Bull of the Woods Wilderness that is located in the Willamette National Forest is incorporated into the Opal Creek Wilderness.

3. The Opal Creek Scenic recreation Area is established, as also generally depicted on the map entitled ''Proposed Opal Creek Wilderness and Scenic recreation Area'' dated July 1996 (Exhibit 1), as described in section 1023(a)(3) of the Opal Creek Bill.

4. Under the U.S. Department of Agriculture's delegations of authority, the Chief of the Forest Service may make the determination on behalf of the Secretary that the conditions is subsection 1023(c)(2) of the Opal Creek Bill have been met. The Secretary has delegated to the Under Secretary for Natural Resources and Environmental the authority to acquire and dispose of lands and interests in lands may be authorized for the protection, management, and administration of the

National Forest System under 7 CFR 2.20(a)(2)(ii). The Under Secretary, in turn, has delegated this authority to the Chief of the Forest Service under 7 CFR 2.60(a)(2). The authority to acquire and dispose of lands and interests in land includes the authority to determine whether certain conditions precedent to the acquisition or disposal, such as those specified in subsection 1023(c)(2) of the Opal Creek bill, have been met. Forest Service Manual 5404.14 further delegates authorities associated with the land adjustment program from the Chief to the Regional Foresters.

Inwitness whereof, the United States, by its Regional Forester, Pacific Northwest Region, Forest Service, has executed this document pursuant to the delegations of authority described above.

Dated: November 9, 1998.

Robert W. Williams,

Pacific Northwest Region, Regional Forester.

[FR Doc. 98–30912 Filed 11–18–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket No. 981109281–8281–01]

Annual Retail Trade Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of Determination.

SUMMARY: In accordance with Title 13, United States Code, Sections 182, 224, and 225, I have determined that the Census Bureau needs to collect data covering annual sales, year-end inventories, purchases, and accounts receivables to provide a sound statistical basis for the formation of policy by various Government agencies. These data also apply to a variety of public and business needs. This annual survey is a continuation of similar retail trade surveys conducted each year since 1951 (except 1954). It provides, on a comparable classification basis, annual sales, purchases, and accounts receivable for 1998 and year-end inventories for 1997 and 1998. These data are not available publicly on a timely basis from nongovernmental or other governmental sources.

FOR FURTHER INFORMATION CONTACT: Ronald Piencykoski or Dorothy Engleking on (301) 457–2713.

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to take surveys necessary to furnish current data on the subjects covered by the major censuses authorized by Title 13, United States Code. This survey will provide continuing and timely national statistical data on retail trade for the period between economic censuses. The data collected in this survey will be within the general scope and nature of those inquiries covered in the economic census.

The Census Bureau will require a selected sample of firms operating retail establishments in the United States (with sales size determining the probability of selection) to report in the 1998 Annual Retail Trade Survey. We will furnish report forms to the firms covered by this survey and will require their submissions within thirty days after receipt. The sample will provide, with measurable reliability, statistics on the subjects specified above.

The survey has been submitted to the Office of Management and Budget (OMB), in accordance with the Paperwork Reduction Act, Public Law 96–511, as amended, and approved under OMB Control Number 0607–0013. We will provide copies of the form upon written request to the Director, Bureau of Census, Washington, DC 20233–0001.

Based upon the foregoing, I have directed that an annual survey be conducted for the purpose of collecting these data.

Dated: November 10, 1998.

Kenneth Prewitt,

Director, Bureau of the Census.

[FR Doc. 98–30945 Filed 11–18–98; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket No. 981109282–8282–01]

Annual Trade Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of Determination.

SUMMARY: In accordance with Title 13, United States Code, Sections 182, 224, and 225, I have determined that the Census Bureau needs to collect data covering year-end inventories, annual sales, and purchases to provide a sound statistical basis for the formation of policy by various Government agencies. These data also apply to a variety of public and business needs. This annual survey is a continuation of similar wholesale trade surveys conducted each year since 1978. It provides, on a comparable classification basis, annual sales and purchases for 1998 and year-end inventories for 1997 and 1998. These data are not available publicly on a timely basis from nongovernmental or other governmental sources.

FOR FURTHER INFORMATION CONTACT: Ronald Piencykoski or Dorothy Engleking on (301) 457–2713.

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to take surveys necessary to furnish current data on the subjects covered by the major censuses authorized by Title 13, United States Code. This survey will provide continuing and timely national statistical data on wholesale trade for the period between economic censuses. The data collected in this survey will be within the general scope and nature of those inquiries covered in the economic census.

The Census Bureau will require a selected sample of firms operating merchant wholesale establishments in the United States (with sales size determining the probability of selection) to report in the 1998 Annual Trade Survey. We will furnish report forms to the firms covered by this survey and will require their submissions within thirty days after receipt. The sample will provide, with measurable reliability, statistics on the subjects specified above.

The survey has been submitted to the Office of Management and Budget (OMB), in accordance with the Paperwork Reduction Act, Public Law 96–511, as amended, and approved under OMB Control Number 0607–0195. We will provide copies of the form upon written request to the Director, Bureau of Census, Washington, DC 20233–0001.

Based upon the foregoing, I have directed that an annual survey be conducted for the purpose of collecting these data.

Dated: November 10, 1998.

Kenneth Prewitt,

Director, Bureau of the Census.

[FR Doc. 98–30946 Filed 11–18–98; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 51–98]

Foreign-Trade Zone 184, Klamath Falls, OR; Reissuance of Grant of Authority

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Klamath Falls, Oregon, grantee of FTZ 184, requesting reissuance of the grant of authority for FTZ 184 to Klamath International Trade and Transportation Services, Inc., an Oregon for-profit corporation which is authorized to apply to the FTZ Board to

become the grantee of FTZ 184 under a special act of the Oregon Legislature, approved on June 12, 1997 (ORS 307.850, Section 2). Klamath International Trade and Transportation Services, Inc. has concurrently requested that the FTZ 184 grant of authority be reissued with Klamath International Trade and Transportation Services, Inc. as grantee. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 9, 1998.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is January 19, 1999. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to February 2, 1999.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW, Washington, DC 20230

Office of the Area Port Director, U.S. Customs Service, 511 NW Broadway, Rm 198, Portland, OR 97209

Dated: November 9, 1998.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–30988 Filed 11–18–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–811]

Hot Rolled Lead and Bismuth Carbon Steel Products From Germany: Extension of Time Limits for Preliminary Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limits of preliminary results of review.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the administrative review of the antidumping duty order on hot rolled lead and bismuth carbon steel products from Germany. The review covers one manufacturer/exporter and the period March 1, 1997, through February 28, 1998.

EFFECTIVE DATE: November 19, 1998.

FOR FURTHER INFORMATION CONTACT: Javier Barrientos or Stephanie Moore, Office of AD/CVD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2849 or (202) 482–3692, respectively.

SUPPLEMENTAL INFORMATION: Because it is not practicable to complete this review within the initial time limits established by section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department is extending the time limits for completion of the preliminary results until no later than March 31, 1999. *See* Decision Memorandum to Robert S. LaRussa, dated October 30, 1998, which is a public document on file in the Central Records Unit.

This extension is in accordance with section 751(a)(3)(A) of the Act (19 U.S.C. 1675(a)(3)(A)).

Dated: November 13, 1998.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 98–30985 Filed 11–18–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–412–810]

Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom; Antidumping Duty Administrative Review; Time Limits

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limits of preliminary results of review.

SUMMARY: The Department of Commerce (the Department) is extending the time limits of the preliminary results of the fifth antidumping duty administrative review of the antidumping duty order on hot rolled lead and bismuth carbon steel products from the United Kingdom. The review covers one manufacturer/exporter of the subject merchandise to the United States for the period March 1, 1997, through February 28, 1998.

EFFECTIVE DATE: November 16, 1998.

FOR FURTHER INFORMATION CONTACT: Russell Morris, Office of AD/CVD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1167.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete this review within the initial time limits established by the Uruguay Round Agreements Act, pursuant to 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department is extending the time limits for completion of the preliminary results until no later than March 31, 1999. *See Memorandum to Robert S. LaRussa,* dated November 5, 1998, which is a public document on file in the Central Records Unit.

This extension is in accordance with section 751(a)(3)(A) of the Act (19 U.S.C. 1675(a)(3)(A)).

Dated: November 18, 1998.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–30987 Filed 11–18–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–428–812]

Hot-Rolled Lead and Bismuth Carbon Steel Products From Germany: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limits of preliminary results of review.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the administrative review of the countervailing duty order on hot rolled lead and bismuth carbon steel products from Germany. The review covers one manufacturer/exporter and the period January 1, 1997, through December 31, 1997.

EFFECTIVE DATE: November 19, 1998.

FOR FURTHER INFORMATION CONTACT: Robert Copyak or Eric B. Greynolds,

Office of AD/CVD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTAL INFORMATION: Because it is not practicable to complete this review within the initial time limits established by section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department is extending the time limits for completion of the preliminary results until no later than March 31, 1999. *See* Decision Memorandum to Robert S. LaRussa, dated October 30, 1998, which is a public document on file in the Central Records Unit.

This extension is in accordance with section 751(a)(3)(A) of the Act (19 U.S.C. 1675(a)(3)(A)).

Dated: November 18, 1998.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 98–30986 Filed 11–18–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Docket No. 981103273–8273–01

RIN 0693–ZA24

Precision Measurement Grants et al; Notice of Financial Assistance

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform potential applicants that the following programs of the National Institute of Standards and Technology (NIST) are offering financial assistance as follows: (1) the Precision Measurement Grants Program; (2) the 1999 Summer Undergraduate Research Fellowships (SURF) in the areas of Atomic, Molecular and Optical (AMO) and Radiation Physics, in Materials Science and Engineering, and in Manufacturing Engineering; (3) the Materials Science and Engineering Grants Program; and (4) the Fire Research Grants Program.

The Precision Measurement Grants Program is seeking proposals for significant, primarily experimental, research in the field of fundamental measurement or the determination of fundamental constants. Applicants must submit an abbreviated proposal for preliminary screening. Based on the merit of the abbreviated proposal, applicants will be advised whether a full proposal should be submitted. The programs ''SURFing the Physics Laboratory,'' ''SURFing the Materials Science and Engineering Laboratory,'' and ''SURFing the Manufacturing Engineering Laboratory'' will provide an opportunity for the Physics Laboratory (PL), the Materials Science and engineering Laboratory (MSEL), the Manufacturing Engineering Laboratory (MEL), and the National Science Foundation (NSF) to join in a partnership to encourage outstanding undergraduate students to pursue careers in science and engineering. The PL program will function by exposing students to world class atomic, molecular, optical (AMO) and radiation physicists and facilities in the NIST Physics Laboratory, and by strengthening undergraduate AMO physics curricula by forming the basis for ongoing collaborations. The MSEL program will function by providing research opportunities with internationally known NIST scientists in the fields of ceramics, solid state chemistry, metallurgy, polymers, neutron condensed matter science, and materials reliability. The MEL program will function by providing research opportunities with internationally known NIST scientists in the fields of intelligent systems, automated production, precision engineering, and manufacturing systems integration. The NIST Program Directors will work with physics, materials science, manufacturing engineering, intelligent systems, automated production, precision engineering, and other science-related department chairs and directors of multi-disciplinary centers of excellence to identify outstanding undergraduates (including graduation seniors) who would benefit from off-campus summer research in an honors academy environment. The Materials Science and Engineering Laboratory (MSEL) Grants Program, National Institute of Standards and Technology (NIST), is continuing its program for grants and cooperative agreements in the following fields of research: Ceramics, Metallurgy, Polymer Sciences, Neutron Scattering Research and Spectroscopy. Each applicant must submit one signed original and two copies of each proposal along with a Grant Application, (Standard Form 424 REV. 7/97 and other required forms), as referenced under the provisions of OMB Circular A–110 and 15 CFR 24. The Fire Research Grants Program is limited to innovative ideas in the fire research area generated by the proposal writer, who chooses the topic and approach, consistent with the program description/objectives of this notice.

DATES: The Precision Measurement Grants Program abbreviated proposals must be received at the address listed below no later than the close of business February 1, 1999. The semifinalists will be notified of their status by March 22, 1999, and will be requested to submit their full proposals to NIST by close of business on May 7, 1999. Selection of the awards will be made by Friday, August 15, 1999.

The Physics, MSEL and MEL SURF Programs' proposals must be received no later than the close of business February 15, 1999.

The MSEL Grants Program proposals must be received no later than the close of business September 30, 1999.

The Fire Research Grants Program proposals must be received no later than the close of business September 30, 1999.

ADDRESSES AND CONTACT INFORMATION: For the Precision Measurement Grants Program, applicants are requested to submit any technical questions and an abbreviated proposal (original and two (2) signed copies), with a description of their proposed work of no more than five (5) double spaced pages to: Dr. Barry N. Taylor, Chairman, NIST Precision Measurement Grants Committee, Bldg. 225, Rm. B161, National Institute of Standards and Technology, Gaithersburg, MD 20899–0001, Tel: (301) 975–4220 E-mail: barry.taylor@nist.gov, Website: http://physics.nist.gov/ResOpp/grants/grants.html

For the remainder of the Grants Programs, applicant institutions must submit one signed original and two (2) copies of the proposal to: For the Physics, MSEL and MEL SURF Programs: Attn.: Ms. Anita Sweigert, National Institute of Standards and Technology, Building 221, Room B–160, Gaithersburg, MD 20899–0001, Tel: (301) 975–4200, E-mail: anita.sweigert@nist.gov

Websites for each program are as follows: Physics SURF Program, http://physics.nist.gov/ResOpp/surf/surf.html;MSEL SURF Program, http://www.msel.nist.gov/surf/surf.html; and MEL SURF Program, http://www.mel.nist.gov/opps/surf.htm

Technical questions for the Physics, MSEL and MEL SURF Programs should be directed to the following contact persons: for the Physics Surf Program, Dr. Marc Desrosiers, Tel: (301) 975–5639, E-mail: marc.desrosiers@nist.gov; for the MSEL SURF Program, Dr. Terrell

A. Vanderah, Tel: (301) 975–5785, E-mail: terrell.vanderah@nist.gov; and for the MEL SURF Program, Ms. Lisa Jean Fronczek, Tel: (301) 975–6633, E-mail: 1fronczek@nist.gov.

For the MSEL Grants Program, each application package should be clearly marked to identify the field of research and should be submitted to: Materials Science and Engineering Laboratory, Attn.: Ms. Patty Salpino, National Institute of Standards and Technology, Building 223, Room A305, Gaithersburg, Maryland 20899–0001, Tel: (301) 975–5731, E-mail: patty.salpino@nist.gov

For the Fire Research Grants Program: Building and Fire Research Laboratory (BFRL), Attn: Ms. Sonya Parkham, Building 226, Room B206, National Institute of Standards and Technology, Gaithersburg, Maryland 20899–0001, Tel: (301) 975–6854, E-mail: sonya.parkham@nist.gov

With the Exception of the MSEL Grants Program, all administrative questions concerning these programs may be directed to the NIST Grants Office at (301) 975–6329. Administrative questions regarding the MSEL Grants Program should be directed to Ms. Marlene Taylor at (301) 975–5653.

SUPPLEMENTARY INFORMATION: *Catalog of Federal Domestic Assistance Name and Number:* Measurement and Engineering Research and Standards—11.609.

Authority: The authority for the Precision Measurement Grants Program is as follows: As authorized by Section 2 of the Act of March 3, 1901, as amended (15 U.S.C. 272 (b)(2) and (c)(3)), NIST conducts directly, supports through grants and cooperative agreements, a basic and applied research program in the general area of fundamental measurement and the determination of fundamental constants of nature. The authority for the Physics, MSEL and MEL SURF Programs is as follows: The Act of March 3, 1901, as amended (15 U.S.C. 278g–1) authorizes the National Institute of Standards and Technology to expend up to 1 per centum of the funds appropriated for activities of NIST in any fiscal year, as the Director deems appropriate, for financial assistance awards in the form of cooperative agreements to students at institutions of higher learning within the United States. These students must show promise as present or future contributors to the missions of NIST. Cooperative agreements are awarded to assure continued growth and progress of science and engineering in the United States, including the encouragement of women and minority students to continue their professional development. The authority for the MSEL Grants Program is as follows: As authorized under 15 U.S.C. 272 (b)(6) and (c)(16), the MSEL conducts a basic and applied research program directly and through grants and cooperative agreements to eligible recipients. The authority for the Fire Research Grants Program is as follows: As authorized by Section 16 of the Act of March 3, 1901, as amended (15 U.S.C. 278f), the NIST Building and Fire Research Laboratory conducts directly and through grants and cooperative agreements, a basic and applied fire research program.

Program Description/Objectives

The program description/objectives for the Precision Measurement Grants Program are as follows: NIST sponsors these grants to encourage basic, measurement-related research in U.S. universities and colleges and to foster contacts between NIST scientists and those faculty members of U.S. academic institutions who are actively engaged in such work. The Precision Measurement Grants are also intended to make it possible for such faculty members to pursue new, fundamental measurement ideas for which other sources of support may be difficult to find. There is some latitude in research topics that will be considered under the Precision Measurement Grants Program. The key requirement is that the proposed project support NIST's ongoing work in the field of basic measurement science, which includes:

1. Experimental and theoretical studies of fundamental physical phenomena which test the basic laws of physics or which may lead to new or improved fundamental measurement methods and standards.

2. The determination of important fundamental physical constants.

In general, proposals for experimental research will be given preference over proposals for theoretical research because of the greater expense of experimental work. Proposals from workers at the assistant and associate professor level who have some record of accomplishment are especially encouraged in view of the comparative difficulty aspiring researchers have in obtaining funds.

Typical projects which have been funded through NIST Precision Measurement Grants Program include:

(1) Eötvös experiment-cryogenic version, D.F. Bartlett, University of Colorado.

(2) A test of local Lorentz invariance using polarized ^{21}Ne nuclei, T.E. Chupp, Harvard University.

(3) A new method to search for an electric dipole moment of the electron, L.R. Hunter, Amherst College.

(4) High-precision timing of millisecond pulsars, D.R. Stinebring, Princeton, University.

(5) Development of an atom interferometer gyroscope for tests of general relativity, M. Kasevich, Stanford Univerisity.

(6) Spectroscopy of francium: towards a precise parity nonconservation measurement in a laser trap, Luis A. Orozco, State University of New York at Stony Brook.

(7) Measurement of the magnetically-introduced QED birefringence of the vacuum, Siu Au Lee, Colorado State University.

(8) Measurement of Newton's constant G using a new method, J.H. Gundlach, Unversity of Washington.

The progranm description/objectives for the Physics, MSEL and MEL SURF Programs are as follows: To build a mutually beneficial relationship between the student, the institution of higher learning and NIST. This is the sixth year of the Physics SURF Program which is partially funded by the NSF Physics Division as a Research Experience for Undergraduates (REU) site. This is the second year of a proposed three year MSEL SURF Program and the first year of proposed five year MEL SURF Program funded by the NSF Materials Science Division as a Research Experience for Undergraduates (REU) site. Between ten and twenty percent of the associated student stipends, travel and housing has been provided in cost sharing by the participating institutions in previous years.

NIST is one of the nation's premier research institutions for the physical sciences and, as the lead Federal agency for technology transfer, is providing a strong interface between government, industry and academia. On-site researchers at NIST come from a broad range of institutions. Owing to its unique mission to support the U.S. economy by working with industry, NIST embodies a special science culture, developed from a large and well-equipped research staff that enthusiastically blends programs that address the immediate needs of industry with longer-term research that anticipates future needs. This occurs in few other places that enables the Physics Laboratory, the Materials Science and Engineering Laboratory and the Manufacturing Engineering Laboratory to offer unique research and training opportunities for undergraduates, providing them a research-rich environment and exposure to state of the art equipment, to scientists at work, and to professional contacts that represent future employment possibilities.

Attending to the long term needs of many U.S. high-technology industries, NIST's Physics Laboratory conducts basic research in the areas of quantum, electron, optical, atomic, molecular, and radiation physics. NIST's Materials Science and Engineering Laboratory conducts basic research in the

electronic, magnetic, optical, superconducting, mechanical, thermal, chemical, and structural properties of metals, ceramics, polymers, and composits. Much of this applied research is devoted to overcoming barriers to the next technological revolution, in which individual atoms and molecules will serve as the fundamental building blocks of devices. NIST's Manufacturing Engineering laboratory conducts theoretical and experimental research in length, mass, force, vibration, acoustics, and ultrasonics, as well as intelligent machines, precision control of machine tools, information technology for the integration of all elements of a product's life cycle. Much of this applied research is devoted to overcoming barriers to the next technological revolution, in which manufacturing facilities are spread across the globe.

To achieve these goals, PL staff develop and utilize highly specialized equipment, such as polarized electron microscopes, scanning tunneling microscopes, lasers, and x-rays and synchrotron radiation sources. Research projects can be theoretical or experimental and will range in focus from computer modeling of fundamental processes through trapping atoms and choreographing molecular collisions, to standardization for radiation therapy.

Preparation of unique materials by atomic level tailoring of multi-layers, perfect single crystals, and nanocomposites are just some of the future technologies being developed and explored in NIST's MSEL. To achieve these goals, staff develop and utilize highly specialized equipment, such as high resolution electron microscopes, atomic force microscopes, a nuclear reactor, x-ray diffraction sources, lasers, magnetometers, plasma furnaces, melt spinners, molecular beam epitaxy systems, and power atomization chambers. Research projects can be theoretical or experimental and will range in focus from the structural, chemical, and morphological characterization of advanced materials made in the NIST laboratories to the accurate measurement of the unique properties possessed by these special materials.

MEL's research and development leads to standards, test methods and data that are crucial to industry's success in exploiting advanced manufacturing technology. Critical components of manufacturing at any level are measurement and measurement-related standards, not just of products, but increasingly of information about products and processes. Thus, MEL programs enhance both physical and information-based measurements and standards. Research projects can be theoretical or experimental, and will range in focus from intelligent machine control, characterizing a manufacturing process or improving product data exchange, to the accurate measurement of an artifact's dimensions.

SURF students will work one-on-one with our nation's top physical scientists both from NIST and from some of our nation's leading, high tech industries. It is anticipated that successful SURF students will move from a position of reliance on guidance from their research advisors to one of research independence during the twelve-week period. One goal of this partnership is to provide opportunities for our nation's next generation of scientists and engineers to engage in world-class scientific research at NIST, especially in ground-breaking areas of emerging technologies. This carries with it the hope of motivating these individuals to pursue a Ph.D. in physics, materials science, engineering, mathematics, physics, or computer science, and to consider research careers. SURFing the Physics Laboratory, SURFing the Materials Science and Engineering Laboratory and SURFing the Manufacturing Engineering Laboratory will help to forge partnerships with NSF and with post-secondary institutions that demonstrate strong, hands-on undergraduate science curricula, especially those with a demonstrated commitment to the education of women, minorities, and students with disabilities. These programs will be open to all U.S. citizens or U.S. permanent residents interested in AMO or radiation physics, materials science or manufacturing research.

The program description/objectives for the MSEL Grants Program are as follows: All proposals submitted must be in accordance with the program objectives listed below. The appropriate Program Manager for each field of research may be contacted for clarification of the program objectives.

I. Ceramics Division, 852—The primary objective is to supplement division activities in the area of ceramic processing, tribology, composites, machining, interfacial chemistry, and microstructural analysis. The contact person for this division is: Dr. Ronald Munro and he may be reached at (301) 975–6127.

II. Polymers Division, 854—The primary objective is to support division programs in polymer blends, composites, electrical applications, as well as, dental and medical polymeric materials through participation in research on metrology, synthesis, processing and characterization of structure, mechanical, thermal and electrical properties. The contact person for this division is: Dr. Donald L. Hunston, and he may be reached at (301) 975–6837.

III. Metallurgy Division, 855—The primary objective is to develop techniques to predict, measure and control transformations, phases, microstructure and kinetic processes as well as mechanical, physical and chemical properties in metals and their alloys. The contact person for this division is: Dr. Robert J. Schaefer and he may be reached at (301) 975–5961.

IV. Metallurgy Division, 855—The primary objective is to develop new and improved sensors, measurement techniques, and analytical models for metallurgical structures and processes in order to facilitate the development and adoption of intelligent processing systems for materials. The contact person for this division is: Dr. Robert J. Schaefer and he may be reached at (301) 975–5961.

V. NIST Center for Neutron Research, 856—The primary objective is to develop high resolution cold and thermal neutron scattering research approaches and related physics, chemistry, macromolecular and materials applications. The contact person for this division is: Dr. John J. Rush and he may be reached at (301) 975–6231.

The program description/objectives for the Fire Research Grants Program are as follows:

A. *Fire Modeling and Applications:* To perform research, develop and demonstrate the application of analytical models for the quantitative prediction of the consequences of fires and the means to assess the accuracy of those models. This includes: developing methods to assess fire hazard and risk; creating advanced, usable modelling for the calculation of the effluent from building fires; modelling the ignition and burning of furniture, contents, and building elements such as walls; developing methods of evaluating and predicting the performance of building safety design features; developing a protocol for determining the accuracy of algorithms and comprehensive models; developing data bases to facilitate use of fire models; and developing methodologies to acquire, model, and display fire information.

B. *Large Fire Research:* To perform research and develop techniques to measure, predict the behavior and mitigate large fire events. This includes: understanding the mechanisms of large

fires that control gas phase combustion, burning rate, thermal and chemical emissions, and transport processes; developing field measurement techniques to assess the near- and far-field impact of large fires and their plumes; performing research on the use of combustion for environmental cleanup; predicting the performance and environmental impact of fire protection measures and fire fighting systems and techniques; and developing and operating the Fire Research Program large-scale experimental facility.

C. *Advance Fire Measurements:* To produce the scientific basis and robust measurement methods for characterizing fires and their effluents at full- and reduced-scales. This includes discrete point, volume-integrated, and time- and space-resolved measurements for such properties as temperature, smoke density, chemical species, and flow velocity. Laboratory and computational research are also performed to understand the underpinning fire phenomena to ensure the soundness of the developed measurement techniques.

D. *Materials Fire Research:* To perform research enabling the confident development by industry of new, less-flammable materials and products. This capability is based on understanding fundamentally the mechanisms that control the ignition, flame spread and burning rate of materials, as well as and the chemical and physical characteristics that affect these aspects of flammability. This includes: developing methods of measuring the response of a material to fire conditions that enable assured prediction of the full-scale performance of the final product; developing computational molecular dynamics and other mechanistic approaches to understand flame retardant mechanisms and the effects of polymer chemical structure on flammability; characterizing the burning rates of charring and non-charring polymers and composites; and delineating and modeling the enthalpy and mass transfer mechanisms of materials combustion.

E. *Fire Sensing and Extinguishment:* To develop understanding, metrology and predictive methods to enable high-performance fire sensing and extinguishment systems; and devising new approaches to minimize the impact of unwanted fires and the suppression process. This includes: performing research for the identification and in-situ measurement of the symptoms of pending and nascent fires and the consequences of suppression; devising or adapting monitors for these variables and the intelligence for timely interpretation of the data; developing methods to characterize the performance of new approaches to fire detection and suppression; determining mechanisms for deflagration and detonation suppression by advanced agents and principles for their optimal use; and modeling the extinguishment process.

Eligibility

For the Precision Measurement Grants Program, colleges and universities in the United States. As part of this research program since 1970, NIST has awarded Precision Measurement Grants to faculty members of U.S. universities and colleges for significant, primarily experimental research in the field of fundamental measurement or the determination of fundamental constants. For the Physics, MSEL and MEL SURF Programs, colleges and universities in the United States with degree granting programs in materials science, chemistry, engineering, computer science, mathematics, or physics. Participating students must be U.S. citizens or permanent U.S. residents. For the MSEL Grants Program, this program will be open to all U.S. citizens or U.S. permanent residents. For the Fire Research Grants Program, academic institutions, non-Federal agencies, independent and industrial laboratories, and research organizations.

Funding Availability

For all Grants programs listed below, awards are contingent on the availability of funds. For the Precision Measurement Grants Program, the annual budget is approximately $300,000. The annual awards must have scopes of work that are clearly severable into annual increments of meaningful work which represent solid accomplishments if continuing (i.e., multi-year) funding is not made available to the applicant. Because of commitments for supporting multi-year programs, only a portion of the budget is available to initiate new programs or renew existing ones in any one year.

For the Physics SURF Program, the NIST Physics Laboratory will commit approximately $50,000 to support cooperative agreements under this program. The NIST Physics Laboratory's REU Program is anticipating renewal of funding by the NSF at the level of $70,000 per year. The anticipated direct costs for stipends, travel, housing, and conference attendance for twenty-five students is about $150,000. The actual number of awards made under this announcement will depend on the level of cost sharing by our academic partners.

For the MSEL SURF Program, the NIST Materials Science and Engineering Laboratory anticipates receiving funding as a NSF REU Program at the level of $50,000 per year. For the MEL SURF Program, the NIST Manufacturing Engineering Laboratory anticipates receiving funding as a NSF REU Program at the level of $52,000 per year. It is anticipated that the funding for both of these programs would provide for the costs of stipends, travel and housing, and the conference attendance of eight students for each program. The actual number of awards made under this announcement will depend on the level of cost sharing by our academic partners.

For the MSEL Grants Program, proposals will be considered for research projects from one to three years. When a proposal for a multi-year award is approved, funding will initially be provided for only the first year of the program. If an application is selected for funding, NIST has no obligation to provide any additional funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of NIST. Funding for each subsequent year of a multi-year proposal will be contingent upon satisfactory progress, in relation to the mission of the MSEL program, and the availability of funds. The annual awards must have scopes of work that are clearly severable and can be easily separated into annual increments of meaningful work, which represent solid accomplishments if prospective funding is not made available to the applicant, (i.e., the scopes of work for each funding period must produce identifiable and meaningful results in and of themselves).

For the Fire Research Grants Program, the annual budget is $1.36 million. Because of commitments for the support of multi-year programs, only a portion of the budget is available to initiate new programs in any one year. Most grants and cooperative agreements are in the $10,000 to $100,000 per year range.

For all of the above programs, the issuance of awards is contingent upon the availability of funding.

Proposal Review Process and Evaluation Criteria

For the Precision Measurement Grants Program, to simplify the proposal writing and evaluation process, the following selection procedure will be used:

The abbreviated proposals will be reviewed on the basis of the evaluation criteria below. The NIST Precision

Measurement Grants Committee and the Outside Review Committee will then select approximately four to eight semifinalists and request that these candidates submit full proposals. The same committees will evaluate the detailed proposals based on the evaluation criteria, and the two grantees with the highest scores for fiscal year 2000 will be selected.

The evaluation criteria to be used in evaluating the preapplication proposals and full proposals include:

1. The importance of the proposed research—does it have the potential of answering some currently pressing question or of opening up a whole new area of activity?

2. The relationship of the proposed research to NIST's ongoing work—will it support one of NIST's current efforts to develop a new or improved fundamental measurement method or physical standard, or to better understand an important, but already existing, measurement method or physical standard?

3. The feasibility of the research—is it likely that significant progress can be made in a three year time period with the funds and personnel available?

4. The past accomplishments of the applicant—is the quality of the research previously carried out by the prospective grantee such that there is a high probability that the proposed research will be successfully carried out?

Each of these factors is given equal weight in the selection process.

For the Physics, MSEL and MEL SURF Programs, all proposals will be reviewed and ranked by a panel of three NIST scientists appointed by the Program Directors on the basis of the evaluation criteria. Proposals should include the following:

(A) Student Information:

(1) Official transcript for each student nominated with a recommended G.P.A. of 3.0 or better, out of a possible 4.0;

(2) A personal statement from each student and statement of commitment to participate in the 1998 SURF program, including a description of the student's prioritized research interests;

(3) A resume for each student; and

(4) Two letters of recommendation for each student.

(B) Information About the Applicant Institution:

(1) Description of the institution's education and research philosophy, faculty interests, on-campus research program(s) and opportunities, and overlapping research interests of NIST and the institution; and

(2) A statement addressing issues of academic credit and cost sharing.

For the Physics, MSEL and MEL SURF Programs, the evaluation criteria includes the following:

Evaluation of Student's Academic Ability and Commitment to Program Goals (70%): Includes, but is not limited to, evaluation of the following: completed course work; expressed research interest; prior research experience; grade point average in courses relevant to program; career plans; honors and activities.

Evaluation of Applicant Institution's Commitment to Program Goals (30%): Includes, but is not limited to, evaluation of the following: institution's focus on AMO physics, materials science, manufacturing research and all of its components, including but not limited to engineering, computer science, physics, and mathematics; overlap between research interests of the institution and NIST; emphasis on undergraduate hands-on research; undergraduate participation in research conferences/programs; on-campus research facilities; past participation by students/institution in such programs; and commitment to educate women, minorities, and persons with disabilities. In the spirit of a true partnership, successful applicant institutions will be encouraged to contribute some partial support to the program. A suggested level of participation would be to directly cover student travel (one round trip by common carrier) or housing costs (approximately $1500); stated intent to support the participating students at a research conference, and/or awarding of academic credit for the student research.

Award decisions shall be based upon total evaluation score.

For the MSEL Grants Program, proposals will be reviewed in a two-step process. First, a panel of at least three individuals knowledgeable about the particular scientific area described in the section above that the proposal addresses will conduct a technical review of proposals based on the evaluation criteria. Second, the chief of each division will make final award selections. In making final award selections, the chief of each division will take into account the score received by the applicant and the compatibility of the applicant's proposal with the program objectives of the particular division that the proposal addresses. These objectives are described above in the ''Program Objectives'' section. If an award is made to an applicant that does not receive the highest score in its category by technical reviewers, the Division Chief shall justify the selection in writing. Award decisions shall be based upon the total evaluation score.

For the MSEL Grants Program, the evaluation criteria the technical reviewers will use in evaluating the proposals includes the following:

1. *Rationality*. Reviewers will consider the coherence of the applicant's approach and the extent to which the proposal effectively addresses scientific and technical issues.

2. *Qualifications of Technical Personnel*. Reviewers will consider the professional accomplishments, skills, and training of the proposed personnel to perform the work in the project.

3. *Resources Availability*. Reviewers will consider the extent to which the proposer has access to necessary facilities and other support to accomplish project objectives.

4. *Technical Merit of Contribution*. Reviewers will consider the potential technical effectiveness of the proposal and the value it would contribute to the field of materials science and engineering.

Each of these factors will be given equal weight in the evaluation process.

For the Fire Research Grants Program, all proposals are assigned to the appropriate group leader of the five programs listed above in the program description/objectives. Proposals are evaluated for technical merit based on the evaluation criteria by at least three reviewers chosen from NIST professionals, technical experts from other interested government agencies and experts from the fire research community at large. Both the technical value of the proposal and the relationship of the work proposed to the needs of the specific program are taken into consideration in the group leader's recommendation to the Division Chief. The Division Chief will make the final selections. If an award is made to an applicant that does not receive the highest score in its category by technical reviewers, the Division Chief shall justify the selection in writing. Applicants should allow up to 90 days processing time.

For the Fire Research Grants Program, the evaluation criteria includes the following:

a. Technical quality of the research: 0–35 points.

b. Potential impact of the results: 0–25 points.

c. Staff and institution capability to do the work: 0–20 points.

d. Match of budget to proposed work: 0–20 points.

Award Period

For the Precision Measurement Grants Program, NIST is now accepting applications for two new grants in the amount of $50,000 per year to be

awarded for the period October 1, 1999, through September 30, 2000 (fiscal year 2000). Each grant may be renewed for up to two additional years; however, future or continued funding will be at the discretion of NIST based on such factors as satisfactory performance and the availability of funds.

For the Physics, MSEL and MEL SURF Programs, these programs are anticipated to run between May 25 through August 13, 1999; adjustments may be made to accommodate specific academic schedules (e.g., a limited number of 10-week cooperative agreements).

For the MSEL Grants Program, proposals will be considered for research projects from one to three years. When a proposal for a multi-year award is approved, funding will initially be provided for only the first year of the program. If an application is selected for funding, NIST has no obligation to provide any additional funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of NIST. Funding for each subsequent year of a multi-year proposal will be contingent upon satisfactory progress, in relation to the mission of the MSEL program, and the availability of funds.

For the Fire Research Grants Program, proposals will be considered for research projects from one to three years. When a proposal for a multi-year is approved, funding will initially be provided for only the first year of the program. If an application is selected for funding, DoC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DoC. Funding for each subsequent year of a multi-year proposal will be contingent on satisfatory progress, fit to the NIST Fire Research Program and the availability of funds.

Matching Requirements

Each of the above grants programs does not involve the payment of any matching funds, with the exception of the Physics, MSEL and MEL SURF Programs which use cost-sharing as an evaluation criterion.

Application Kit

An application kit, containing all required application forms and certifications is available by contacting: for the Precision Measurement Grants Program, Ms. Michelle Hane, (301) 975–4397; for the Physics, MSEL and MEL SURF Programs, Ms. Anita Sweigert, (301) 975–4200, websites for each program's application kit are as follows: for the Physics SURF Program, http://physics.nist.gov/ResOpp/surf/surf.html; for the MSEL SURF Program, http://www.msel.nist.gov/surf/surf.html; and for the MEL SURF Program, http://www.mel.nist.gov/opps/surf.htm; for the MSEL Grants Program, Ms. Patty Salphino, (301) 975–5731; and for the Fire Research Grants Program, Ms. Sonya Parham, (301) 975–6854. The application kit includes the following:

SF 424 (Rev 7/97)—Application for Federal Assistance
SF 424A (Rev 7/97)—Budget Information—Non-Construction Programs
SF 424B (Rev 7/97)—Assurances—Non-Construction Programs
CD 511 (7/91)—Certification Regarding Debarment, Suspension, and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying
CD 512 (7/91)—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying
SF-LLL Disclosure of Lobbying Activities

Paperwork Reduction Act

The Standard Form 424 and other Standard Forms in the application kit are subject to the requirements of the Paperwork Reduction Act and have been approved by OMB under Control No. 0348–0043, 0348–0044, 0348–0040, and 0348–0046.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

Additional Requirements

Primary Application Certification

All primary applicant institutions must submit a completed form CD–511, ''Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying,'' and the following explanations must be provided:

1. *Nonprocurement Debarment and Suspension.* Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, ''Nonprocurement Debarment and Suspension'' and the related section of the certification form prescribed above applies;

2. *Drug-Free Workplace.* Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, ''Government wide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies;

3. *Anti-Lobbying.* Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater.

4. *Anti-Lobbying Disclosure.* Any applicant institution that has paid or will pay for lobbying using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR Part 28, Appendix B.

5. *Lower-Tier Certifications.* Recipients shall require applicant/bidder institutions for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying'' and disclosure form, SF–LLL, ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of recipients and should not be transmitted to NIST. SF–LLL submitted by any tier recipient or subrecipient should be submitted to NIST in accordance with the instructions contained in the award document.

Name Check Reviews

All for-profit and non-profit applicants will be subject to a name check review process. Name checks are intended to reveal if any individuals associated with the applicant have been convicted of or are presently facing, criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Preaward Activities

Applicants (or their institutions) who incur any costs prior to an award being made do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that may have been provided, there is no obligation on the part of NIST to cover pre-award costs.

No Obligation for Future Funding

If an application is accepted for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of NIST.

Past Performance

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

False Statements

A false statement on an application is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Delinquent Federal Debts

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

1. The delinquent account is paid in full,
2. A negotiated repayment schedule is established and at least one payment is received, or
3. Other arrangements satisfactory to DoC are made.

Indirect Costs

For the Physics, MSEL and MEL SURF Programs, no Federal funds will be authorized for Indirect Costs (IDC); however, an applicant may provide for IDC under his/her portion of Cost Sharing.

For each of the above grant programs, the total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agent prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

Purchase of American-Made Equipment and Products

Applicants are hereby notified that they are encouraged, to the greatest practicable extent, to purchase American-made equipment and products with funding provided under this program.

Federal Policies and Procedures

Recipients and subrecipients under each of the above grant programs shall be subject to all Federal laws and Federal and Departmental regulations, policies, and procedures applicable to financial assistance awards. Each of the above grant programs does not directly affect any state or local government.

Applications under these programs are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Executive Order Statement

This funding notice was determined to be ''not significant'' for the purposes of Executive Order 12866.

Dated: November 16, 1998.

Robert E. Hebner,

Acting Deputy Director.

[FR Doc. 98–30981 Filed 11–18–98; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111098A]

Mid-Atlantic Fishery Management Council (MAFMC); Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council and the New England Fishery Management Council will hold a public meeting.

DATES: The meetings will be held on Wednesday, December 2, 1998, from 10:00 a.m. until 5:00 p.m. and Thursday, December 3, 1998, from 8:00 a.m. until 3:00 p.m.

ADDRESSES: This meeting will be held at the Radisson Hotel Philadelphia Airport, 500 Stevens Drive, Philadelphia, PA; telephone: 610–521–5900.

Council addresses: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904. New England Fishery Management Council, 5 Broadway, Saugus, MA.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Acting Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 16. or Paul Howard, Executive Director, New England Fishery Management Council; telephone: 781–231–0422.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to review public hearing comments on the Spiny Dogfish Fishery Management Plan and develop recommendations for possible modifications to the management alternatives for consideration by the New England and Mid-Atlantic Councils.

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

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Mid-Atlantic Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: November 13, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–30902 Filed 11–18–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111398C]

Mid-Atlantic Fishery Management Council (MAFMC); Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Demersal Committee and Atlantic States Marine Fisheries Commission (ASMFC) representatives will hold a public meeting.

DATES: The meeting will be held on Tuesday, December 8, 1998, from 10:00 a.m. until 5:00 p.m.

ADDRESSES: The meeting will be held at the Holiday Inn Philadelphia Airport, 45 Industrial Highway, Essington, PA; telephone: 610–521–2400.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Acting Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 16.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to discuss possible changes in the commercial and recreational management systems for

summer flounder, scup, and black sea bass and make recommendations on the development of amendments to the plan.

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

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: November 16, 1998.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–30977 Filed 11–18–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111098B]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling public meetings of its Social Sciences Advisory Panel, Groundfish Advisory Panel and Groundfish Oversight Committee in December, 1998 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). The Social Sciences Advisory Panel will consider issues involving the quality of economic and social impact analyses used in Council fishery management plans (FMPs). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held as follows:

1. December 2, 1998, 9:30 a.m., East Boston, MA.

2. December 15–16, 1998, 9:30 a.m., Peabody, MA.

ADDRESSES: The meetings will be held at the following locations:

1. East Boston—Holiday Inn Boston Logan Airport, 225 McClellan Highway, East Boston, MA 02128; telephone: (617) 569–5250.

2. Peabody-–Holiday Inn, One Newbury Street (Route 1 North), Peabody, MA 01960; telephone: (978) 535–4600.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (781) 231–0422. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1097; telephone: (781) 231–0422.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Wednesday, December 2, 1998, 9:30 a.m.—-Social Sciences Advisory Panel Meeting

The Panel will evaluate the socio-economic data used to develop the Social and Economic Impact Analyses contained in the Monkfish FMP and in the whiting amendment to the Northeast Multispecies FMP and will recommend improvements for future analyses. It also will identify data collection requirements for the Annual Stock Assessment and Fisheries Evaluation (SAFE) Report.

Tuesday, December 15, 1998, 9:30 a.m.—Groundfish Advisory Panel Meeting

The Panel will develop advice to Groundfish Committee on options under consideration for Framework Adjustment 27, the 1999 annual plan adjustment to the Northeast Multispecies FMP, including measures that will be identified by the Council at its December 9–10 meeting.

Wednesday, December 16, 1998, 9:30 a.m.—Groundfish Oversight Committee Meeting

Review the December 15, 1998 Groundfish Advisory Panel meeting report; develop recommendations to the Council for Framework Adjustment 27 to the Northeast Multispecies FMP, including measures that will be identified by the Council at its December 9–10 meeting.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: November 13, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–30901 Filed 11–18–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111398B]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) ad-hoc policy committee for developing goals and objectives for a long-term technical assessment of non-catch salmon mortalities in Council salmon fisheries will hold a public meeting.

DATES: The meeting will be held on Wednesday, December 9, 1998, beginning at 11:00 a.m. and will continue until 5:00 p.m.

ADDRESSES: The meeting will be held at the Pacific States Marine Fisheries Commission, Conference Room, 45 SE 82nd Drive, Suite 100, Gladstone, OR; telephone: (503) 650–5400.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: John Coon, Salmon Fishery Management Coordinator; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to begin developing goals and objectives for a long-term technical assessment of non-catch mortalities in Council fisheries.

Although other issues not contained in this agenda may come before the Council for discussion, in accordance with the Magnuson-Stevens 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 Mr. John Rhoton at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: November 16, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–30976 Filed 11–18–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110598E]

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of its Marine Reserves, Snapper Grouper, Advisory PanelSelection, Dolphin/Wahoo, and Habitat Committees; and a Council Session.

DATES: The meetings will be held from November 30-December 4, 1998. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Ramada Inn, 1701 South Virginia Dare Trail, Kill Devil Hills, NC; telephone: (800) 635-1824; (252) 441-2151.

Council address: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306; Charleston, SC 29407-4699.

FOR FURTHER INFORMATION CONTACT: Susan Buchanan, Public Information Officer; telephone: (843) 571-4366; fax: (843) 769-4520; email: susan.buchanan@noaa.gov

SUPPLEMENTARY INFORMATION:

Meeting Dates

November 30, 1998, 1:30 p.m. to 5:00 p.m.—Marine Reserves Committee;

The Marine Reserves Committee will review results of the marine reserves workshop, review and revise the council's action plan regarding the use of reserves, revise the draft criteria for developing reserves, and develop committee recommendations regarding the Council's Marine Reserves Advisory Panel composition;

December 1, 1998, 8:30 a.m. to 12:00 noon; 1:30 p.m. to 3:00 p.m.—Snapper Grouper Committee;

The committee will hear presentations on assessments for red porgy, gag,and greater amberjack. The committee will also hear reports on the following: compliance with minimum size limits, information from last year's fishermen logbook reports, information concerning the experimental closed area of the Oculina Bank, and the status of golden tilefish and snowy grouper quotas. The committee will also take action on the seasonal framework as needed and hear the status of Snapper Grouper Amendments 8 and 9 and the emergency request for Amendment 9;

December 1, 1998, 3:00 p.m. to 5:00 p.m.—Advisory Panel Selection Committee (Closed Session);

The committee will review applications from those wishing to serve on Council advisory panels and develop recommendations for appointments to these panels;

December 2, 1998, 8:30 a.m. to 12:00 noon—Dolphin/Wahoo Committee;

NMFS will present the committee with the status of the Council's request to be designated true lead in dolphin and wahoo management as well as the status of the data request the Council submitted for dolphin and wahoo landings. The committee will then review the Dolphin/Wahoo Workshop Report and review and revise the options paper regarding possible dolphin/wahoo management actions;

December 2, 1998, 1:30 p.m. to 5:00 p.m.; December 3, 1998, 8:30 a.m. to 12:00 noon—Habitat Committee;

NMFS will present the committee with the status of the Habitat Plan and the Habitat Comprehensive Amendment. The committee will then hear presentations on sargassum;

December 3, 1998, 1:30 p.m. to 6:00 p.m.—Council Session;

The Council will hear the following Committee reports: Habitat, Snapper Grouper, Marine Reserves, and Advisory Panel Selection (Closed Session):

At 1:45 p.m., the Council will hear public comment on the Sargassum Plan before taking action to modify and approve the plan;

At 2:45 p.m., the Council will hear public comment on any proposed framework measures for the snapper grouper fishery before approving such measures as necessary;

At 4:15 p.m., the Council will review the Mackerel Advisory Panel request to allow the retention of Spanish mackerel in the gillnet fishery for spot and take action on this issue;

At 5:15 p.m., the Council will meet in closed session to appoint new advisory panel members;

December 4, 1998, 8:30 p.m. to 1:00 p.m.—Council Session;

The Council will hear the Dolphin/Wahoo Committee report, hear the status of the live rock aquaculture program, and NMFS reports on: The Report to Congress on overfished species, implementation of Snapper Grouper Amendment 8, Snapper Grouper Amendment 9 and the emergency regulations on Amendment 9, Golden Crab Framework #1, the 1998-1999 Mackerel Framework action, Mackerel Amendment 9, and status on quotas for the following species: Atlantic king mackerel, Gulf king mackerel (Eastern zone), Atlantic Spanish mackerel, snowy grouper, golden tilefish, wreckfish, and South Atlantic octocorals. The Council will also review the NMFS Hightly Migratory Species Swordfish and Billfish Amendments and comment on the proposed regulations.

The Council will also hear reports on the International Conservation of Atlantic Tunas program, the Atlantic Coastal Cooperative Statistics Program, the Council/NMFS operations plan meeting, and agency and liaison reports before discussing other business.

Although other issues not contained in this agenda may come before the Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues will not be of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by November 23, 1998.

Dated: November 13, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–30900 Filed 11–18–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110698A]

Western Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Council (Council) and its standing committees will meet in Honolulu, HI, during the first week of December.

DATES: The meetings will be held on December 1–3, 1998. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The 98th Council meeting will be held at the Hawaii Prince Hotel, Mauna Kea Ballroom, 100 Holomoana Street, Honolulu, HI 96815; telephone: (808–956–1111).

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: The Council's Standing Committees will meet on December 1, 1998 as follows:

7:30 a.m. to 9:00 a.m. —Enforcement

8:00 a.m. to 10:00 a.m.—Crustaceans

9:00 a.m. to 10:30 a.m.—VMS

10:30 a.m. to 12:30 p.m.—Pelagics and Bottomfish (concurrent)

1:30 p.m. to 3:00 p.m.—Indigenous Fishing Rights and Ecosystem & Habitat (concurrent)

3:00 p.m. to 5:00 p.m.—Precious Corals and Executive/Budget & Programming (concurrent)

The full Council will meet on December 2–3, 1998, from 9:00 a.m. to 5:00 p.m., each day.

Agenda

The full Council will meet to address the agenda items below. The order in which agenda items will be addressed can change. The Council will meet as late as necessary to complete its scheduled business.

9:00 a.m., Wednesday, December 2, 1998

A. Call to order, opening remarks, introductions

Approval of Agenda and 97th Council Minutes

B. Reports from the Islands, American Samoa, Guam, Hawaii, and Northern Mariana Islands

C. Enforcement

1. Reports from the U.S. Coast Guard, National Marine Fisheries Service Office of Enforcement, and NOAA General Counsel for Enforcement and Litigation, Southwest Region

2. Cooperative agreement for Guam and Northern Mariana Islands

3. Improving vessel safety through new technology and equipment

4. Standing Committee recommendations

5. Public comment

D. Vessel Monitoring System (VMS)

1. Report on NMFS Industry Advisory Panel and National VMS Program

2. Report on the Hawaii VMS program

3. Standing Committee recommendations

E. Pelagic Fishery Management Plan (FMP) issues

1. 2nd/3rd quarter 1998 longline fishery report (for Hawaii and American Samoa)

2. Status of area closure measure for American Samoa

3. Outline for a comprehensive data amendment

4. Blue marlin management options

5. Protected species interactions, considering: 3rd quarter 1998 turtle takes and research, 1998 bird takes, bird mitigation project and population dynamics workshop, other sources of mortality for seabirds, and reports of Food and Agricultural Organization (FAO) Rome expert consultations on shark fisheries, seabird/fishery interactions and fishing capacity

6. Sharks, including finning update and research initiatives

7. Report on the Asia-Pacific Economic Cooperation (APEC) meeting - Honolulu - October

8. Upcoming meetings: Interim Scientific Committee (ISC) - Honolulu - January, and Fourth Multilateral High Level Conference (MHLC4) - Honolulu - February

9. Scientific and Statistical Committee (SSC) and Standing Committee Recommendations

F. Crustaceans FMP issues (Northwestern Hawaiian Islands (NWHI) lobster fishery)

1. Update on the 1998 commercial fishing season

2. Results from the 1998 research cruise

3. Status of NMFS tagging project

4. Possible final action and framework regulatory measure for bank-specific harvest guidelines for NWHI lobster fishery (see F.4. continued)

5. SSC and Standing Committee Recommendations

G. Fishermen's Forum: Information needs

9:00 a.m., Thursday, December 3, 1998

H. Reports from Fishery Agencies and Organizations, including: Department of Commerce National Marine Fisheries Service Southwest Region, Southwest Fisheries Science Center, and NOAA General Counsel Southwest Region; Department of the Interior Fish and Wildlife Service

I. Precious corals FMP issues

1. Status of fishery

2. Findings of recent research in the Northwestern Hawaiian Islands

3. Plan Team, SSC and Standing Committee recommendations

J. Bottomfish FMP issues

1. Status of onaga, ehu and hapuupuu, and request to NMFS to remove from overfished list

2. Report on Hawaii Institute of Marine Biology (HIMB) and NMFS research activities

3. Report on state management in Main Hawaiian Islands (MHI)

4. Selection of preferred option for Federal management in MHI: considering delegation of authority to state and other options (see J.4. continued)

5. SSC and Standing Committee recommendations

K. Native Rights and Indigenous Fishing issues

1. Status of Marine Conservation Plans

2. Report of Community Development Program

3. NMFS Vessel Loan Programs

4. Report on Northern Mariana Islands turtle conservation workshop

5. SSC and Standing Committee recommendations

L. Ecosystem & Habitat issues

1. Comments on Draft Environmental Impact Statement (DEIS) for Farallon de Mendinilla, Commonwealth of the Northern Mariana Islands (CNMI)

2. Other issues/activities

3. Development of Coral Reef Ecosystem FMP, including goals and objectives, draft outline, proposed initial regulations, and research and assessment needs

M. Program Planning issues

1. Review of Council Programs

2. Report from Western Pacific Fisheries Information Network (WpacFIN)

3. SSC and Standing Committee recommendations

N. Administrative Matters

1. Administrative Reports

2. Meetings and Workshops

3. 99th Council Meeting

4. Review Advisory Panel applicants and select new members

5. Standing Committee recommendations

O. Other Business

1. Election of new officers for 1999

P. Supplemental information for agenda items F.4. and J.4

F.4.(Continued) Possible final action on framework regulatory measure for bank-specific harvest guidelines

1. The Council will be discussing and may be taking final action to establish a process for setting annual bank-specific harvest guidelines for the 1999 NWHI lobster season and beyond.

2. Action is being taken under the framework procedure for new measures in the Crustacean FMP.

3. At its April 1998 meeting, the Council requested the development of options governing the process by which the NMFS Southwest Regional Administrator, in consultation with the Council, allocates the annual harvest guideline among banks or areas to prevent overfishing and achieve optimum yield.

4. At its July 1998 meeting, the Council selected the partial bank-specific harvest guidelines alternative as its preferred option.

5. At its December 1998 meeting, the Council will also consider two new options: (1) full bank-specific harvest guidelines and (2) Necker- Maro-Gardner- bank-specific harvest guidelines. If it continues to endorse its preferred alternative, final Council action can be taken. Selection of a different alternative would be considered initial action under the Crustacean FMP framework process.

6. A background document summarizing this issue, need for framework management measure, and alternative actions is available for public comment (see **ADDRESSES**) and was distributed to all NWHI limited entry permit holders, Crustacean Advisory Panel, and Crustacean Plan Team members.

J.4. (Continued) Selection of preferred option for Federal management in MHI

1. The Council will be discussing and may be taking action to delegate authority to the State of Hawaii to manage bottomfish in the Federal Exclusive Economic Zone (EEZ) off the MHI, or other options so the state rules can be enforced in all MHI waters.

2. Other alternatives for the Council to help facilitate the effectiveness of the state's new bottomfish management plan, that will be considered at the meeting, include (1) status quo, (2) Council resolution, (3) regulatory fix, and (4) withdrawal of Federal management.

3. At its July 1998 meeting, the Council requested the development of options for assisting the state with MHI bottomfish management, including delegation of authority to the state.

4. A background document summarizing this issue and proposed alternative actions is available for public comment (see **ADDRESSES**).

Although other issues not contained in this agenda may come before the Council for discussion, in accordance with the Magnuson-Stevens 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

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: November 16, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–30975 Filed 11–18–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111298D]

Marine Mammals; Scientific Research and Enhancement Permit (PHF# 116–1477)

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Sea World of Texas, 10500 Sea World Drive, San Antonio, Texas, 78251, has applied in due form for a permit to take Hawaiian monk seals (*Monachus schauinslandi*) for purposes of scientific research and enhancement.

DATES: Written comments must be received on or before December 21, 1998.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Southwest Region, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213 (562/980-4001); and

Protected Species Program Manager, Pacific Islands Area Office, 2570 Dole Street, Room 106, Honolulu, HI 9682–2396 (808/973–2987).

Written data or views, or requests for a public hearing on this request, should be submitted to the Director, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this application would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222.23).

The application is for the permanent transfer of ten (10) currently captive, unreleasable female Hawaiian monk seals from the National Marine Fisheries Service's Kewalo Research Facility to Sea World of Texas for research and enhancement purposes. The primary objective of the proposed activity is to make the seals available for scientific research on an opportunistic basis in order to benefit the wild population of Hawaiian monk seals. A secondary objective is to increase public awareness of the status of the Hawaiian monk seal through education efforts and by providing an opportunity to observe the species in captivity.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: November 12, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–30899 Filed 11–18–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Spectrum Planning and Policy Advisory Committee; Notice of Meeting

ACTION: Notice of Recruitment of Private Sector Members, Spectrum Planning and Policy Advisory Committee (SPAC).

SUMMARY: The SPAC was established on July 19, 1965 as the Frequency Management Advisory Council (FMAC). The name was changed in April, 1991, and in July, 1993, to reflect the increased scope of its mission. The objective of the Committee is to advise the Secretary of Commerce on radio frequency spectrum planning matters and means by which the effectiveness of Federal Government frequency management may be enhanced. NTIA nominates candidates for membership; selection and appointment is made by the Secretary of Commerce. The Committee consists of nineteen members, fifteen from the private sector, and four from the Federal Government, whose knowledge of telecommunications and spectrum management is balanced in the functional areas of manufacturing, analysis and planning, operations, research, academia and international negotiations.

The membership reflects the Department's commitment to attaining balance and diversity. SPAC members must obtain a background investigation prior to appointment. These clearances are necessary so that members can be permitted access to relevant information needed in formulating recommendations to the U.S. Government. The SPAC meets approximately twice a year, and members are not compensated for their services.

On an as-needed basis, the SPAC seeks private-sector members with frequency management, electromagnetic compatibility, frequency assignment and related experience and expertise in the functional areas listed above. If you would like to be considered for membership on the SPAC, please send a fact sheet describing your company, provide details of your interest/activity in at least one of the functional areas listed above, and provide a short biographical. Material may be faxed to the number below.

DEADLINE: This request remains open for one year from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Inquires may be addressed to the Executive Secretary, SPAC, Mr. Richard A. Lancaster, National Telecommunications and Information Administration, Room 4082, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230, telephone 202–482–4487, or fax to 202–482–4396.

Dated: November 10, 1998.

Richard A. Lancaster,

Executive Secretary, Spectrum Planning and Policy Advisory Committee, National Telecommunications and Information Administration.

[FR Doc. 98–30903 Filed 11–18–98; 8:45 am]

BILLING CODE 3510–60–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Malaysia

November 13, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 19, 1998.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for swing, special swing, special shift, and carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 67834, published on December 30, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 13, 1998.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 22, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Malaysia and exported during the period January 1, 1998 through December 31, 1998.

Effective on November 19, 1998, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
340/640	1,360,813 dozen.
350/650	129,356 dozen.
351/651	353,702 dozen.
645/646	352,476 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1997.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–30943 Filed 11–18–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, December 4, 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. 98–31046 Filed 11–17–98; 2:26 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Monday, December 7, 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. 98–31047 Filed 11–17–98; 2:26 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., Friday, December 11, 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. 98–31048 Filed 11–17–98; 2:26 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Monday, December 14, 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. 98–31049 Filed 11–17–98; 2:26 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., Friday, December 18, 1998.

PLACE: 1155 21st St., NW., Washington, DC, 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. 98–31050 Filed 11–17–98; 2:26 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Monday, December 21, 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. 98–31051 Filed 11–17–98; 2:26 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Monday, December 28, 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. 98–31052 Filed 11–17–98; 2:26 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.060A]

Indian Education Formula Grants to Local Educational Agencies

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 1999.

Purpose: Provides grants to support local educational agencies in their efforts to reform elementary and secondary school programs that serve Indian students in order to ensure that such programs are based on challenging State content standards and State student performance standards used for all students, and are designed to assist Indian students to meet those standards.

Eligible Applicants: Local educational agencies (LEAs) and certain schools funded by the Bureau of Indian Affairs, and Indian tribes under certain conditions.

Deadline for Transmittal of Applications: February 1, 1999. Applications not meeting the deadline will not be considered for funding in the initial allocation of awards. Applications not meeting the deadline *may* be considered for funding if the Secretary determines, under section 9117(d) of the Elementary and Secondary Education Act of 1965 (the Act) that funds are available and that reallocation of those funds to those applicants would best assist in advancing the purposes of the program. However, the amount and date of an individual award, if any, made under section 9117(d) of the Act may not be the same to which the applicant would have been entitled if the application had been submitted on time.

Deadline for Intergovernmental Review: April 5, 1999.

Applications Available: December 1, 1998.

Available Funds: $62,000,000.

Estimated Range of Awards: $3,000 to $1,400,000.

Estimated Average Size of Awards: $49,000.

Estimated Number of Awards: 1,474.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 75, 77, 79, 80, 81, 82, 85, and 86.

For Applications or Information Contact: Cathie Martin, Office of Indian Education, U.S. Department of Education, 400 Maryland Avenue, SW, Room 3W115, Washington, DC 20202–6335. Telephone: (202) 260–1683. Individuals who use a telecommunications device for the deal (TDD) may call the Federal Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request of the contact person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to This Document

Anyone nay view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The Official version of this document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 7811.

Dated: November 13, 1998.

Gerald N. Tirozzi,

Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 98–30908 Filed 11–18–98; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Idaho Operations Office; Notice of Availability of Solicitation for Awards of Financial Assistance

AGENCY: Idaho Operations Office, DOE

ACTION: Notice of Availability of Solicitation Number DE–PS07–99ID13735—University Reactor Instrumentation (URI) Program.

SUMMARY: The U.S. Department of Energy, Idaho Operations Office, is soliciting applications for awards of financial assistance (i.e., grants) that will support educational institutions in updating their nuclear reactors or related radiation laboratory equipment and instrumentation. The issuance date of Solicitation Number DE–PS07–99ID13735 is November 18, 1998. The solicitation is available in its full text via the Internet at the following URL address: http://www.id.doe.gov/doeid/PSD/proc-div.html. The deadline for receipt of applications is 57 calendar days after the issuance date of the solicitation or by January 14, 1999.

ADDRESSES: Applications should be submitted to: Connie Osborne, Procurement Services Division, U.S. Department of Energy, Idaho Operations Office, 850 Energy Drive, Mail Stop 1221, Idaho Falls, Idaho 83401–1563.

FOR FURTHER INFORMATION CONTACT: Connie Osborne, Contract Specialist at *osbornchl@id.doe.gov* or Linda Hallum, Contracting Officer at *hallumla@id.doe.gov*.

SUPPLEMENTARY INFORMATION: The solicitation is issued pursuant to 10 CFR 600.6(b). Eligibility for awards under this University Reactor Instrumentation (URI) Program will be restricted to U.S. colleges and universities having a duly licensed, operating nuclear research or training reactor. The purpose of this program is to upgrade, purchase, or maintain equipment and instrumentation related to the performance, control, or operational capability of the reactor facility. The program will increase the quality and/or efficiency of the operation of the reactor facility and/or will improve or expand the research and training capabilities of the reactor facility.

Issued in Idaho Falls on November 10, 1998.

Michael L. Adams,

Acting Director, Procurement Services Division.

[FR Doc. 98–30963 Filed 11–18–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Reedsport-Fairview Transmission Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of Floodplain and Wetlands Involvement.

SUMMARY: This notice announces BPA's proposal to reconstruct or relocate a section of the Reedsport-Fairview No. 1 115-kilovolt (kV) transmission line located in Coos County, Oregon. This action will improve BPA's ability to maintain this section of line. In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements, BPA will prepare a floodplain and wetlands assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within any affected floodplain and wetlands. The assessment will be included in the environmental assessment being prepared for the proposed project in accordance with the requirements of the National Environmental Policy Act. A floodplain statement of findings will be included in any finding of no significant impact that may be issued following the completion of the environmental assessment.

DATE: Comments are due to the address below no later than December 4, 1998.

ADDRESS: Submit comments to Communications, Bonneville Power Administration—ACS–7, P.O. Box 12999, Portland, Oregon 97212. Internet address: comment@bpa.gov.

FOR FURTHER INFORMATION CONTACT: Nancy A. Wittpenn, Environmental Project Lead—ECN–4, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon, 97208–3621, phone number 503–230–3297, fax number 503–230–5699. Internet address: nawittpenn@bpa.gov.

SUPPLEMENTARY INFORMATION: The project would include the following types of activities that may involve work in wetlands and floodplains: constructing or removing transmission line structures and conductors and access road building or regrading. The project area is located in Coos County, Oregon. Wetlands and floodplains that may be affected by the project are in the Ross, Shinglehouse, Isthmus, and Coalbank Sloughs and located in T26S, R12W, Sections 7, 18, and 19; T26S, R13W, Sections 1, 3, 10, 12, 15, 23, and 37.

Maps and further information are available from BPA at the address above.

Issued in Portland, Oregon, on November 10, 1998.

Thomas C. McKinney,

NEPA Compliance Officer.

[FR Doc. 98–30962 Filed 11–18–98; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC99–2–001; FERC Form No. 2]

Proposed Information Collection and Request for Comments

November 13, 1998.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has submitted the energy information collection listed in this notice to the Office of Management and Budget (OMB) for review under provisions of Section 3507 of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received public comments from a regulated entity and a Federal agency in response to an earlier notice issued June 18, 1998, 63 FR 34369 (June 24, 1998) and has replied to these comments in its submission to OMB.

DATES: Comments regarding this collection of information are best assured of having their full effect if received on or before December 21, 1998.

ADDRESSES: Address comments to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission, Desk Officer, 725 17th Street, N.W. Washington, D.C. 20503. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Chief Information Officer, Attention: Mr. Michael Miller, 888 First Street N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at michael.miller@ferc.fed.us.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review contains:

1. Collection of Information: FERC Form No. 2 ''Annual Report of Major Natural Gas Companies.''

2. Sponsor: Federal Energy Regulatory Commission.

3. Control No.: OMB No. 1902–0028. The Commission is now requesting that OMB approve a three-year extension of the current expiration date, with no substantive changes to the existing collection. There is an increase in the reporting burden due to an increase in the number of companies filing this information. This increase reflects an adjustment to the Commission's regulatory burden for this information collection requirements. These are mandatory collection requirements.

4. Necessity of Collection of Information: Submission of the information is necessary to enable the Commission to implement the statutory provisions of Natural Gas Act (NGA), 15 U.S.C. 717. The NGA authorizes the Commission to prescribe rules and regulations concerning accounts, records and memoranda as appropriate for purposes of administering the NGA. The Commission may prescribe a system of accounts for jurisdictional companies, and after notice and hearing, may determine the account in which particular outlays and receipts will be entered, charged or credited. The FERC Form 2 data is used for the following: to assess the financial conditions of natural gas pipeline companies; verification of cost data in various rate proceedings and supply programs, in the audit program implemented by the Office of Finance, Accounting and Operations (formerly Office of Chief Accountant) and to compute annual charges. Major natural gas pipeline companies are defined as having combined gas transported or stored for a fee that exceeds 50 million Dekatherms. The reporting requirements are found at 18 CFR 260.1.

5. Respondent Description: The respondent universe currently comprises on average, 59 companies subject to the Commission's regulations.

6. Estimated Burden: 87,615 total burden hours, 59 respondents, 1 response annually, 1,485 hours per response (average).

7. Estimated Cost Burden to Respondents: 87,615 hours ÷ 2,080 hours × $109,888 per year = $4,628,768. Average cost per respondent = $78,454.

Statutory Authority: Section 8, 10(9) of the Natural Gas Act (NGA), 15 U.S.C. 717g, 717i.

David P. Boergers,

Secretary.

[FR Doc. 98–30924 Filed 11–18–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC99–2A–001; FERC Form No. 2A]

Proposed Information Collection and Request for Comments

November 13, 1998.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has submitted the energy information collection listed in this notice to the Office of Management and Budget (OMB) for review under provisions of Section 3507 of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received public comments from a Federal agency in response to an earlier notice issued June 18, 1998, 63 FR 34369–70 (June 24, 1998) and has replied to these comments in its submission to OMB.

DATES: Comments regarding this collection of information are best assured of having their full effect if received within 30 days of this notification.

ADDRESSES: Address comments to the Office of Management and Budget, Office of Information and Regulatory Affairs, *Attention:* Federal Energy Regulatory Commission, Desk Officer, 725 17th Street, N.W. Washington, D.C. 20503. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Chief Information Officer, Attention: Mr. Michael Miller, 888 First Street N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at

(202) 273–0873, and by e-mail at michael.miller@ferc.fed.us.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review contains:

1. Collection of Information: FERC Form No. 2–A ''Annual Report of Non-Major Natural Gas Companies.''

2. Sponsor: Federal Energy Regulatory Commission.

3. Control No.: OMB No. 1902–0030. The Commission is now requesting that OMB approve a three-year extension of the current expiration date, with no substantive changes to the existing collection. There is a decrease in the reporting burden due to a decrease in the number of companies filing this information. This increase reflects an adjustment to the Commission's regulatory burden for this information collection requirement. These are mandatory collection requirements.

4. Necessity of Collection of Information: Submission of the information is necessary to enable the Commission to implement the statutory provisions of Natural Gas Act (NGA), 15 U.S.C. 717. The NGA authorizes the Commission to prescribe rules and regulations concerning accounts, records and memoranda as appropriate for purposes of administering the NGA. The Commission may prescribe a system of accounts for jurisdictional companies, and after notice and hearing, may determine the account in which particular outlays and receipts will be entered, charged or credited. The FERC Form 2–A data is used for the following: to assess the financial conditions of natural gas pipeline companies; verification of costs data in various rate proceedings and supply programs, in the audit program implemented by the Office of Finance, Accounting and Operations (formerly Office of Chief Accountant) and to compute annual charges. Non-Major natural gas pipeline companies are defined as not meeting the filing threshold for FERC Form No. 2, but having combined gas transported or stored for a fee that exceeds 200,000 Dekatherms in each of the three previous calendar years. The reporting requirements are found at 18 CFR 260.2.

5. Respondent Description: The respondent universe currently comprises on average, 58 companies subject to the Commission's regulations.

6. Estimated Burden: 1,740 total burden hours, 58 respondents, 1 response annually, 30 hours per response (average).

7. Estimated Cost Burden to Respondents: 1,740 hours ÷ 2,080 hours × $109,888 per year = $91,926. Average cost per respondent = $1,585.

Statutory Authority: Sections 8, 10(a) of the Natural Gas Act (NGA), 15 U.S.C. 717g, 717i.

David P. Boergers,

Secretary.

[FR Doc. 98–30925 Filed 11–18–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC99–6–001 FERC Form No. 6]

Information Collection Submitted for Review and Request for Comments

November 13, 1998.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has submitted the energy information collection listed in this notice to the Office of Management and Budget (OMB) for review under provisions of Section 3507 of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received comments from an oil pipeline company and from a federal agency in response to an earlier notice issued June 19, 1998, 63 FR 34639 (June 25, 1998). The Commission has responded to these comments in its submission to OMB.

DATES: Comments regarding this collection of information are best assured of having their full effect if received within 30 days of this notification.

ADDRESSES: Address comments to Office of Management and Budget, Office of Information and Regulatory Affairs, *Attention:* Federal Energy Regulatory Commission, Desk Officer, 725 17th Street, N.W., Washington, D.C. 20503. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Chief Information Officer, Attention: Mr. Michael Miller, 888 First Street N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at michael.miller@ferc.fed.us.

SUPPLEMENTARY INFORMATION:

Description

The energy information collection submitted to OMB for review contains:

1. Collection of Information: FERC Form 6 ''Annual Report for Oil Pipeline Companies''

2. Sponsor: Federal Energy Regulatory Commission

3. Control No.: OMB No. 1902–0022. The Commission is now requesting that OMB approve a three-year extension of the current expiration date, with no changes to the existing collection. There is an increase in the reporting burden due to an increase in the number of entities who are now subject to the Commission's jurisdiction and as a result must submit this annual report. Specifically, as a result of Order No. 571, 59 FR 59137 (November 16, 1994), jurisdictional companies that have revenues in excess of $350,000 in each of the previous three years are required to file page 700. Currently 5 companies in addition to the 148 respondents must file page 700 based on the earnings threshold. This is a mandatory information collection requirement.

4. Necessity of Collection of Information: Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the provisions of the Interstate Commerce Act (ICA), 49 U.S.C. The ICA authorizes the Commission to make investigations and to collect and record data plus prescribe rules and regulations concerning accounts, records and memoranda as appropriate for purposes of administering the ICA. The Commission may prescribe a system of accounts for jurisdictional companies, and after notice and hearing, may determine the accounts in which particular outlays and receipts will be entered, charged or credited. Every pipeline carrier subject to the provisions of Section 20 of the ICA must file with the Commission copies of the FERC Form 6.

The Commission's Office of Finance, Accounting and Operations (formerly Office of Chief Accountant) uses the information in the following manner: in its audit program; for continuous review of on the financial condition of regulated companies; verification in various rate proceedings and supply programs; and for computation of annual charges which are then assessed against oil pipeline companies to recover the Commission's annual costs.

5. Respondent Description: The respondent universe currently comprises on average, 153 companies subject to the Commission's jurisdiction

(148 who file the Form 6 plus 5 who must file page 700).

6. Estimated Burden: 20,622 total burden hours, 153 respondents, 1 response annually, (139 hours per response for the Form 6, 10 hours per response for the page 700) (average).

7. Estimated Cost Burden to Respondents: 20,572 hours ÷ 2,080 hours per year × $109,888 per year = $1,086,835 (FERC Form 6), $2,642 (FERC Form 6—Page 700 only), total = $1,089,434 ($1,086,792 + $2,642) (average cost per respondent = $7,343 (Form 6), $528 (Page 700).

Statutory Authority: Section 20 of the Interstate Commerce Act (ICA), 49 U.S.C.

David P. Boergers,

Secretary.

[FR Doc. 98–30926 Filed 11–18–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG99–5–000]

Destin Pipeline Co., L.L.C.; Notice of Filing

November 13, 1998.

Take notice that on November 4, 1998, Destin Pipeline Company, L.L.C. (Destin) filed standards of conduct under Order Nos. 497 *et seq.*[1] and Order Nos. 566 *et seq.*[2]

Destin states that it served copies of the standards of conduct on each of its shippers and interested state commissioners.

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 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before November 30, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–30922 Filed 11–18–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. MG99–1–000, MG99–2–000, MG99–3–000, and MG99–4–000]

Trunkline Gas Co., Trunkline LNG Co., Southwest Gas Storage Co., and Panhandle Eastern Pipe Line Co.; Notice of Filing

November 13, 1998.

Take notice that on November 2, 1998, Trunkline Gas Co. (Trunkline) Trunkline LNG Co. (Trunkline LNG), Southwest Gas Storage Co. (Southwest), and Panhandle Eastern Pipe Line Co. (Panhandle) filed standards of conduct under Order No. 497 *et seq.*,[1] Order No. 566 *et seq.*[2] and Order No. 599.[3]

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 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before November 30, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–30923 Filed 11–18–98; 8:45 am]

BILLING CODE 6717–01–M

[1] Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. 1986–1990 ¶ 30,820 (1988); Order No. 497–A, *order on rehearing,* 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. 1986–1990 ¶ 30,868 (1989); Order No. 497–B, *order extending sunset date,* 55 FR 53291 (December 28, 1990), FERC Stats. & Regs. 1986–1990 ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date,* 57 FR 9 (January 2, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,934 (1991) *rehearing denied,* 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); *Tenneco Gas* v. *FERC* (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date,* 57 FR 58978 (December 14, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,958 (December 4, 1992); Order No. 497–E, *order on rehearing and extending sunset date,* 59 FR 243 (January 4, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,958 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification,* 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date,* 59 FR 32884 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing,* 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing,* 59 FR 65707 (December 21, 1994), 69 FERC ¶ 61,334 (December 14, 1994).

[1] Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. 1986–1990 ¶ 30,820 (1988); Order No. 497–A, *order on rehearing,* 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. 1986–1990 ¶ 30,868 (1989); Order No. 497–b, *order extending sunset date,* 55 FR 53291 (December 28, 1990), FERC Stats. & Regs. 1986–1990 ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date,* 57 FR 9 (January 2, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,934 (1991), *rehearing denied,* 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); *Tenneco Gas* v. *FERC* (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date,* 57 FR 58978 (December 14, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,598 (December 4, 1992); Order No. 497–E, *order on rehearing and extending sunset date,* 59 FR 243 (January 4, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,958 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification,* 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date,* 59 FR 32884 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing,* 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing,* 59 FR 65707 (December 21, 1994), 69 FERC ¶ 61,334 (December 14, 1994).

[3] Reporting Interstate Natural Gas Pipeline Marketing Affiliates on the Internet, Order No. 599, 63 FR 43075 (August 12, 1998), FERC Stats. & Regs. ¶ 31,064 (1998).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Requesting Comments, Final Terms and Conditions, Recommendations and Prescriptions

November 13, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Original License for a Major Water Project—5 Megawatts or Less (filed as an Applicant-Prepared Environmental Assessment).

b. *Project No.:* 11480–001.

c. *Date Filed:* November 25, 1997.

d. *Applicant:* Haida Corporation.

e. *Name of Project:* Reynolds Creek Hydroelectric Project.

f. *Project Location:* On the Southwest side of Prince of Wales Island in Southeast Alaska, about 10 miles east of Hydaburg. The project would not be located on federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant:* Mr. John Bruns, Haida Corporation, P.O. Box 89, Hydaburg, AK 99922, (907) 285–3721. *Applicant Contact:* Mr. Michael V. Stimac, HDR Engineering, Inc., 500 108th Avenue NE, Suite 1200, Bellevue, WA 98004–5538, (425) 453–1523.

i. *FERC Contact:* Carl J. Keller, 202–219–2831.

j. *Brief Description of Project:* The proposed project would consist of the following proposed facilities: (1) A 20-foot-long, 6-foot-high, concrete diversion dam; (2) a small concrete box-type intake structure with protective trash racks located on the left side of the diversion dam; (3) a 42-inch-diameter, 3,200-foot-long, steel penstock positioned above ground on saddled supports; (4) a 40-foot-wide, 100-foot-long, pre-engineered metal powerhouse, with one 1,500-kilowatt (kW) horizontal impulse turbine/generator (Phase 1) and a second 3,500-kW turbine/generator to be added (Phase 2); (5) an 80-foot-long tailrace; (6) access roads totaling 500 feet long; (7) an overhead 34.5-kilovolt, 10.9-mile-long transmission line on 300 foot centers; and (8) related appurtenances.

k. Deadlines for Filing Terms and Conditions, Recommendations, and Prescriptions; Applicant's Reply Comments; and Cost Statements under PURPA: See item (p) and standard paragraph D–10.

l. This notice also consists of the following standard paragraphs: A–4 and D–10.

m. *Location of Application:* A copy of the application, applicant's Draft Environmental Assessment, responses to information requests, and subsequent filings are available for inspection or reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE, Room 2A–1, Washington, DC 20426, or by calling (202) 208–2326. Copies of this information may also be viewed or printed by accessing the Commission's WebSite on the Internet at www.ferc.fed.us. For assistance, users can call (202) 208–2222. Copies of the above information can also be inspected from the applicant's contact located in item h. above.

n. *PURPA:* Haida Corporation intends to seek benefits under § 2210 of the Public Utilities Regulatory Policy Act of 1978 (PURPA), and believes that the proposed project meets the definition under § 292.202(p) of 18 CFR for a new dam or diversion. As such, the U.S. Fish and Wildlife Service, National Marine Fisheries Service, and the state agency exercising authority over the fish and wildlife resources of the state have mandatory conditioning authority under the procedures provided for at § 30(C) of the Federal Power Act.

o. *Submission of Cost Statements:* Within 60 days after the date for filing mandatory terms and conditions, the fish and wildlife agencies must file with the Commission Secretary, a cost statement of the reasonable costs the agency incurred in setting mandatory terms and conditions for the proposed project.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

D10. Filing and Service of Responsive Documents—The Commission is requesting comments; final recommendations, terms, conditions, and prescriptions; and applicant's reply comments.

The Commission directs that all comments, and final recommendations, terms, conditions, and prescriptions concerning the application be filed with the Commission *within 90 days* from the issuance date of this notice. All reply comments by the applicant must be filed with the Commission within 135 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All findings must (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Licensing and Compliance, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

David P. Boergers,

Secretary.

[FR Doc 98–30919 Filed 11–18–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

November 13, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Conduit Exemption.

b. *Project No.:* 11468–003.

c. *Date filed:* January 28, 1998.

d. *Applicant:* North Side Canal Company.

e. *Name of Project:* Crossroads Conduit Project.

f. *Location:* On the North Side canal system in Jerome County, Idaho (T. 7S. R. 16E., Sections 23, 24, and 25). The project would not occupy federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Randolph J. Hill, Ida-West Energy Company, P.O. Box 7867, Boise, ID 83707, (208) 395–8930.

i. *FERC Contact:* Any questions on this notice should be addressed to Hector Perez, E-mail address hector.perez@ferc.fed.us, or telephone 202–219–2843.

j. *Deadline for filing motions to intervene and protest:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* This application is not ready for environmental analysis at this time.

l. The project would consist of these proposed facilities: (1) a 900-foot-long, 150-foot-wide forebay with a normal water surface elevation of 3,773.75 feet; (2) a primary overflow bypass channel with a crest elevation of 3,774 feet and a secondary overflow bypass channel with a crest elevation of 3,774.75 feet, both at the forebay; (3) a reinforced concrete intake structure; (4) a 10-foot-diameter, 1,750-foot-long steel penstock; (5) a reinforced concrete powerhouse with a 3,200-kilowatt turbine-generator unit; (6) a 125-foot-long tailrace; and (7) two access roads.

m. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

n. This notice also consists of the following standard paragraphs:

A2. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A9. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

B1. Protests or Motions To Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

D8. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will notify all persons on the service list and affected resource agencies and Indian tribes. If any person wishes to be placed on the service list, a motion to intervene must be filed by the specified deadline date herein for such motions. All resource agencies and Indian tribes that have official responsibilities that may be affected by the issues addressed in this proceeding, and persons on the service list will be able to file comments, terms and conditions, and prescriptions within 60 days of the date the Commission issues a notification letter that the application is ready for an environmental analysis. All reply comments must be filed with the Commission within 105 days from the date of that letter.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

David P. Boergers,

Secretary.

[FR Doc. 98–30920 Filed 11–18–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis

November 13, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Minor New License.

b. *Project No.:* 2032–001.

c. *Date filed:* September 25, 1996.

d. *Applicant:* Lower Valley Power & Light, Inc.

e. *Name of Project:* Strawberry.

f. *Location:* On the Strawberry Creek, in Lincoln County, Wyoming. The project affects 25 acres of the Bridger National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Mr. Winston G. Allred, Lower Valley Power & Light, Inc., 345 North Washington Street, P.O. Box 188, Ofton, WY 83110, (307) 886–3175.

i. *FERC Contact:* Surender M. Yepuri, P.E.; (202) 219–2847.

j. *Deadline Date:* See attached paragraph D10.

k. *Status of Environmental Analysis:* This application has been accepted for

filing and is ready for environmental analysis at this time—see attached standard paragraph D10.

l. *Brief Description of Project:* The project consists of the following existing facilities: (1) a 22-foot-high, 110-foot-long reinforced concrete gravity dam with a 24-foot-long right abutment, a 40-foot-long overflow spillway with a crest elevation of 7,020 feet NGVD, a 16-foot-long intake sluice section, and a 30-foot-long left abutment; (2) a reservoir with a surface area of 2.8 acres at normal pool elevation of 7,021 feet; (3) an 11,300-foot-long, 36-inch-diameter steel penstock; (4) a powerhouse with three turbine-generator units with a total installed capacity of 1,500 kilowatts; (5) a substation; and (6) other appurtenances.

m. *Purpose of Project:* Power generated at the project will be utilized by the utility to supply its municipal utility customers.

n. This notice also consists of the following standard paragraph: D10.

o. Locations of the Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–2325. A copy of the application may also be viewed or printed by accessing the Commission's website on the Internet at www.ferc.fed.us. For assistance, users may call (202) 208–2222. A copy is also available for inspection and reproduction at the applicant's office (see item (h) above).

D10. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

David P. Boergers,

Secretary.

[FR Doc. 98–30921 Filed 11–18–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6191–2]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; RCRA Expanded Public Participation

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: RCRA Expanded Public Participation, OMB Control Number 2050–0149, expiration date: 11/30/98. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 21, 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. 1688.03.

SUPPLEMENTARY INFORMATION:

Title: RCRA Expanded Public Participation (OMB Control No. 2050–0149; EPA ICR No. 1688.03.) This is a request for extension of a currently approved collection.

Abstract: EPA has a statutory obligation, under section 7004, to provide for, encourage, and assist public participation in the development, revision, implementation, and enforcement of any regulation, guideline, information, or program under the Act. The regulations implementing these requirements are codified at 40 CFR parts 124 and 270.

EPA promulgated requirements for providing additional opportunities for the public to be involved in the RCRA permitting process under 40 CFR part 124, sections 124.31 through 124.33 and in part 270, sections 270.62 and 270.66. The part 124 requirements apply to all types of hazardous waste treatment, storage, and disposal facilities, unless exempted under a specific section; the part 270 requirements apply only to hazardous waste combustors planning trial burns. These requirements are important components in: (1) Meeting its statutory mandate to promote public participation in the development, revision, and implementation of any regulation under RCRA; and (2) achieving EPA's goal of enhancing public involvement. EPA believes that these regulations encourage people to become involved in the permitting process and increase understanding of hazardous waste facilities. 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 09/04/98 (63 FR 47277); no comments were received.

Burden Statement: The annual reporting burden associated with activities related to both the pre-application meeting, estimated to

average 89.1 hours, and to the information repository, estimated to average 7.6 hours. The annual recordkeeping burden associated with activities related to both the pre-application meeting, estimated to average 0.5 hours (to retain documentation), and to the information repository, estimated to average 26.5 hours. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners and operators of facilities that treat, store, or dispose of hazardous waste.

Estimated Number of Respondents: 395.

Frequency of Response: 790.

Estimated Total Annual Hour Burden: 7253 hours.

Estimated Total Annualized Cost Burden: $9,204.00.

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. 1688.03 and OMB Control No. 2050–0149 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OP Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460 (or E-Mail Farmer.Sandy@epamail.epa.gov); 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 11, 1998.

Richard Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 98–30967 Filed 11–18–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6191–3]

National Advisory Council for Environmental Policy and Technology, Environmental Information and Public Access Committee (EIPAC) Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92463, EPA gives notice of a two-day meeting of the Environmental Information and Public Access Committee (EIPAC) of the National Advisory Council for Environmental Policy and Technology (NACEPT). The NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy issues. This meeting of the Environmental Information and Public Access Committee will focus on providing stakeholder input to the Agency on information management issues, especially information resource activities that may impact the proposed reorganization of EPA's IRM programs. Issues include public access to environmental information, quality and integration of media information, and the use of EPA data to respond to requirements of the Government Performance and Results Act and the National Environmental Performance Partnerships.

DATES: The two-day public meeting will be held on December 8–9, 1998, from 9:00 a.m. to 4:30 p.m. On both days, the meeting will be held at the Crown Plaza Hotel, 14th and K Streets, N.W., Washington, DC.

ADDRESSES: Material or written comments may be transmitted to the Committee through Deborah Ross, Designated Federal Officer for EIPAC, U.S. EPA, Office of Cooperative Environmental Management (1601–F), 401 M Street, S.W., Washington, D.C. 20460.

Additional information is available from Deborah Ross at telephone number (202) 260–9752.

Dated: November 6, 1998.

Gordon Schisler,

Deputy Director, Office of Cooperative Environmental Management.

[FR Doc. 98–30966 Filed 11–18–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6190–8]

Proposed CERCLA Administrative Settlement; Conservation Chemical Company of Illinois, Inc. Superfund Site, Gary, Lake County, Indiana

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(I), notice is hereby given of a proposed administrative settlement under section 122(h) of CERCLA, 42 U.S.C. 9622(h), for recovery of EPA's past response costs and future oversight costs, and the performance of specified future response activities at the Conservation Chemical Company of Illinois, Inc. site in Gary, Lake County, Indiana (''the Site''). The settling parties are as follows: Lucent Technologies Inc. (for Western Electric; Teletype; and Bell Telephone Laboratories); Gary Steel Supply Company; Bethlehem Steel Corporation; LaSalle Steel Company; AlliedSignal Inc. (for Universal Oil Products); K. A. Steel Chemicals Inc.; Union Oil Company of California d/b/a/ UNOCAL; The Steel Company (formerly known as Chicago Steel & Pickling); Union Carbide Corporation; Ansul, Incorporated (for Ansul Co.); Motorola Inc.; PPG Industries, Inc.; Crucible Materials Corporation, Trent Tube Division; American Chain & Cable Co., Inc.; and Navistar International Transportation Corp. (for International Harvester). EPA is providing the settling parties with orphan share compensation, to be credited against a portion of EPA's unreimbursed past costs. The settlement requires the settling parties to pay $258,304 to the Hazardous Substance Superfund for EPA's past costs through November 30, 1997. The settlement also requires the settling parties to pay all of EPA's future oversight costs, incurred in connection with the Site, on and after December 1, 1997. The settlement further requires the settling parties to fund and conduct substantial specified future cleanup activities at the Site. The settlement includes a covenant not to sue the settling partes pursuant section 107(a) of CERCLA, 42 U.S.C. 9607(a), and a covenant not to sue the settling parties for the judicial imposition of damages or civil penalties or to take administrative action for work completed under the

settlement, and approved by the Agency. The U.S. Department of Justice has approved this settlement, consistent with section 122(h) of CERCLA. For thirty (30) days following the date of publication of this document, the Agency will receive written comments relating to the settlement. The Agency will consider all written comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any written comments received will be available for public inspection at U.S. Environmental Protection Agency, Region 5, Superfund Division, Emergency Response Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

DATES: Written comments must be submitted on or before December 21, 1998.

ADDRESSES: The proposed settlement is available for public inspection at the U.S. Environmental Protection Agency, Region 5, Superfund Division, Emergency Response Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590. A copy of the proposed settlement may be obtained from Ms. Valerie Mullins, at the U.S. Environmental Protection Agency, Region 5, Superfund Division, Emergency Response Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, telephone number (312) 353–5578. Written comments should reference the Conservation Chemical Company of Illinois, Inc., Gary, Indiana and EPA Docket No. V–W–98–C–497 and should be addressed to Cynthia N. Kawakami, Associate Regional Counsel, U.S. Environmental Protection Agency, Region 5, Office of the Regional Counsel, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

FOR FURTHER INFORMATION CONTACT: Ms. Valerie Mullins, at the U.S. Environmental Protection Agency, Region 5, Superfund Division, Emergency Response Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, telephone number (312) 353–5578.

Dated: November 3, 1998.

William E. Muno,

Director, Superfund Division, Region 5.

[FR Doc. 98–30965 Filed 11–18–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

November 12, 1998.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments on January 19, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, Room 234, 1919 M St., NW., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at 202–418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0160.

Title: Section 73.158, Directional Antenna Monitoring Points.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 60.

Estimated time per response: 1 hour.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 60 hours.

Total Annual Cost: $36,000.

Needs and Uses: Section 73.158 requires a licensee of an AM station using a directional antenna system to file an informal application to modify their station license to specify a new location for the field monitoring point when circumstances occur which make the present location no longer accessible or unsuitable. Section 73.158 also requires the licensee to file a request for a corrected station license when the descriptive routing to reach any of the monitoring points as shown on the station license is no longer correct due to road or building construction or other changes. These filings provide up-to-date directions for use by the Complaints and Investigations Bureau's inspectors in accurately locating the monitoring points and obtaining field strength measurements relevant to the Commission's enforcement program aimed at keeping electromagnetic interference to a minimum.

OMB Control Number: 3060–0321.

Title: Section 73.68, Sampling Systems for Antenna Monitors.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 100.

Estimated Hours per Response: 2 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 200 hours.

Total Annual Cost: $0.

Needs and Uses: Section 73.68(b) requires that licensees of existing AM broadcast stations with antenna monitor sampling systems, meeting the performance standards specified in the rules, may file informal requests for approval of their sampling systems. Section 73.68(d) requires that a request for modification of the station license be submitted to the FCC when the antenna sampling system is modified or components of the sampling system are replaced. The informal request for approval of sampling systems is used by FCC staff to maintain complete technical information regarding licensees to insure that the sampling system is in full compliance with the Commission's Rules and will not cause interference to other facilities, thus reducing the service provided to the

public. The request for modification of station license is used to issue a new station license.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–30944 Filed 11–18–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 202–000050–066.

Title: United States/Australia New Zealand Association.

Parties: Australia New-Zealand Direct Line, Blue Star Line (North America) Ltd., and Columbus Line.

Synopsis: The proposed amendment clarifies the transshipment ports covered by the agreement and clarifies certain obligations of the members with respect to parents, subsidiaries, or affiliates.

Agreement No.: 202–008900–065.

Title: The ''8900'' Lines Agreements.

Parties: A.P. Moller-Maersk Line, National Shipping Company of Saudi Arabia, P&O Nedlloyd Limited, Sea-Land Service, Inc., and United Arab Shipping Company.

Synopsis: The proposed amendment eliminates various procedural requirements that currently apply to the parties' individual service contracts and a number of other requirements applying to Agreement contracts as well as individual contracts. The parties requested expedited review of their amendment.

Dated: November 13, 1998.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 98–30918 Filed 11–18–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MEDIATION AND CONCILIATION SERVICE

Submission for OMB Review; Comment Request

The Federal Mediation and Conciliation Service (FMCS) is submitting the following public information request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR can be obtained by contacting David L. Helfert, Director of Communications, FMCS, 2100 K Street, N.W., Washington, D.C. 20427. Telephone: (202) 606–8100; Fax: (202) 606–4251; E-mail: FMCS02@erols.com.

Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: OMB Desk Officer for the Federal Mediation and Conciliation Service, Room 10235, Washington, D.C. 20503, within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumption used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Type of Review: Extension.

Agency: Federal Mediation and Conciliation Service.

Title: National Customer Survey.

OMB Number: 3076–0014.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Total Respondents: 1200.

Frequency: Bi-annual.

Total Responses: 1200.

Average Time per Response: 25–30 minutes.

Estimated Total Burden Hours: 666.

Description: The National Customer Survey is designed to assess general awareness of the activities of FMCS as well as specific experience and satisfaction with services provided by FMCS.

Dated: November 16, 1998.

Vella M. Traynham,

Deputy Director.

[FR Doc. 98–30947 Filed 11–18–98; 8:45 am]

BILLING CODE 6372–01–M

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Board, the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) (the ''agencies'') may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid Office of Management and Budget (OMB) control number. The Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, has approved for public comment proposed revisions to the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002) and the extension, without revision, of the Report of Assets and Liabilities of Non-U.S. Branches that are Managed or Controlled by a U.S. Branch or Agency of a Foreign Bank (FFIEC 002s). Both reports are currently approved collections of information. The Board is publishing the proposed revisions and extension on behalf of the agencies. At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the FFIEC should modify the proposed revisions and the extension prior to giving its final approval. The Board will then submit the revisions to OMB for review and approval.

DATES: Comments must be submitted on or before January 19, 1999.

ADDRESSES: Interested parties are invited to submit written comments to the agency listed below. All comments, which should refer to the OMB control number, will be shared among the agencies.

Written comments should be addressed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW Comments received may be inspected in room M–P–500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.12 of the Board's Rules Regarding Availability of Information, 12 CFR 261.12(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed revisions and extensions of the collections of information may be requested from the Board's clearance officer whose name appears below.

Mary M. McLaughlin, Chief, Financial Reports Section, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins, (202) 452–3544, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Proposal to revise and extend the following currently approved collections of information:

1. *Report Title:* Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks.

Form Number: FFIEC 002.

OMB Number: 7100–0032.

Frequency of Response: Quarterly.

Affected Public: U.S. branches and agencies of foreign banks.

Estimated Number of Respondents: 506.

Estimated Total Annual Responses: 2,024.

Estimated Time per Response: 23.15 burden hours.

Estimated Total Annual Burden: 46,856 burden hours.

General Description of Report: This information collection is mandatory: 12 U.S.C. 3105(b)(2), 1817(a)(1) and (3), and 3102(b). Except for select sensitive items, this information collection is not given confidential treatment (5 U.S.C. 552(b)(8)). Small businesses (that is, small U.S. branches and agencies of foreign banks) are affected.

Abstract: On a quarterly basis, all U.S. branches and agencies of foreign banks (U.S. branches) are required to file detailed schedules of assets and liabilities in the form of a condition report and a variety of supporting schedules. This balance sheet information is used to fulfill the supervisory and regulatory requirements of the International Banking Act of 1978. The data are also used to augment the bank credit, loan, and deposit information needed for monetary policy and other public policy purposes. The Federal Reserve System collects and processes this report on behalf of all three agencies.

Current Actions: The proposed revisions to the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002) that are the subject of this notice have been approved by the FFIEC for implementation as of the March 31, 1999, report date. The proposed revisions are summarized as follows:

High-Risk Mortgage Securities: The agencies are proposing to eliminate the High-Risk Mortgage securities items on Schedule RAL. U.S. branches report the fair value and amortized cost of ''High-risk mortgage securities'' in Memorandum items 5 and 6, respectively. The definition of high-risk mortgage securities was taken from the Supervisory Policy Statement on Securities Activities, which the FFIEC approved and the agencies adopted in December 1991, effective February 10, 1992 (57 FR 4029, February 3, 1992). In April 1998, the FFIEC and the agencies rescinded this policy statement and approved in its place a Supervisory Policy Statement on Investment Securities and End-User Derivatives Activities, effective May 26, 1998 (63 FR 20191, April 23, 1998). In adopting the new policy statement, the agencies removed the previous policy statement's specific constraints concerning investments in high-risk mortgage securities, including its ''high risk'' tests. The new policy provides broader guidance covering all investment securities, including the establishment by each institution of appropriate risk limits. Accordingly, the agencies are proposing to eliminate the two memorandum items for high-risk mortgage securities.

Instructional Changes

Computer Software Costs—In March 1998, the American Institute of Certified Public Accountants (AICPA) issued Statement of Position (SOP) 98–1, Accounting for the Costs of Computer Software Developed or Obtained for Internal Use. SOP 98–1 provides guidance on whether costs of internal-use software should be capitalized (and then amortized) or expensed as incurred. Internal-use software has the following characteristics:

(a) The software is acquired, internally developed, or modified solely to meet the entity's internal needs, and

(b) During the software's development or modification, no substantive plan exists or is being developed to market the software externally. This SOP is effective for financial statements for fiscal years beginning after December 15, 1998. The SOP encourages earlier application in fiscal years for which annual financial statements have not been issued. For FFIEC 002 purposes, U.S. branches must adopt this SOP upon its effective date based on their fiscal year. Early application is permitted in the FFIEC 002 in accordance with the transition guidance in the SOP. The FFIEC 002 instructions will be revised to conform with SOP 98–1, including a new Glossary entry on computer software costs that summarizes SOP 98–1 and other relevant accounting standards.

Unsuitable Investment Practices—As mentioned above, the FFIEC and the agencies rescinded the Supervisory Policy Statement on Securities Activities in April 1998 and approved in its place a Supervisory Policy Statement on Investment Securities and End-User Derivatives Activities. The new policy statement does not retain the section of the former policy statement addressing the reporting of securities activities, including a description of practices considered unsuitable when conducted in an institution's investment portfolio. In their **Federal Register** notice publishing the Supervisory Policy Statement on Investment Securities and End-User Derivatives Activities (63 FR 20191), the agencies stated their intent to separately issue supervisory guidance on the reporting of investment securities. The agencies are proposing to add guidance on this reporting matter to the Glossary section of the FFIEC 002 instructions. This approach will make guidance more readily accessible to U.S. branches as they prepare the FFIEC 002.

Re-Booking Charged-Off Loans—When a U.S. branch makes a full or partial direct write-down of a loan or lease that is uncollectible, the branch establishes a new cost basis for the asset. Some U.S. branches may attempt to reverse the previous write-down and ''re-book'' the charged-off loan or lease after concluding that the prospects for

recovering the charge-off have improved. Re-booking a charged-off loan is not an acceptable practice under generally accepted accounting principles and, therefore, is not acceptable for FFIEC 002 purposes. The Glossary entry for ''Assets Classified Loss'' will be revised to indicate that once a new cost basis has been established for a loan or lease through a direct write-down of the asset, this cost basis may not be ''written up'' at a later date.

Consolidation of Subsidiaries—Some U.S. branches have requested that the FFIEC clarify whether subsidiaries of U.S. branches should be consolidated in the FFIEC 002. Consistent with U.S. generally accepted accounting principles (GAAP), subsidiaries that are controlled by a U.S. branch should be consolidated in the FFIEC 002. Accordingly, the general instructions will be revised to indicate that, consistent with GAAP, a U.S. branch should consolidate all entities in which it maintains a controlling financial ownership interest, e.g., a direct or indirect ownership interest of more than 50 percent of an entity's outstanding voting shares.

2. *Report Title:* Report of Assets and Liabilities of a Non-U.S. Branch that is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non-U.S.) Bank.

Form Number: FFIEC 002S.

OMB Number: 7100–0273.

Frequency of Response: Quarterly.

Affected Public: U.S. branches and agencies of foreign banks.

Estimated Number of Respondents: 130.

Estimated Total Annual Responses: 520.

Estimated Time per Response: 6 burden hours.

Estimated Total Annual Burden: 3,120 burden hours.

General Description of Report: This information collection is mandatory: 12 U.S.C. 3105(b)(2), 1817(a)(1) and (3), and 3102(b) and is given confidential treatment (5 U.S.C. 552(b)(8)).

Small businesses are not affected.

Abstract: On a quarterly basis, all U.S. branches and agencies of foreign banks are required to file detailed schedules of their assets and liabilities in the form FFIEC 002. The FFIEC 002S is a separate supplement to the FFIEC 002 that collects information on assets and liabilities of any non-U.S. branch that is ''managed or controlled'' by a U.S. branch or agency of the foreign bank. Managed or controlled means that a majority of the responsibility for business decisions, including but not limited to decisions with regard to lending or asset management or funding or liability management, or the responsibility for recordkeeping in respect of assets or liabilities for that foreign branch resides at the U.S. branch or agency. A separate FFIEC 002S must be completed for each managed or controlled non-U.S. branch. The FFIEC 002S must be filed quarterly along with the U.S. branch's or agency's FFIEC 002. The data are used:

(1) To monitor deposit and credit transactions of U.S. residents;

(2) For monitoring the impact of policy changes;

(3) For analyzing structural issues concerning foreign bank activity in U.S. markets;

(4) For understanding flows of banking funds and indebtedness of developing countries in connection with data collected by the International Monetary Fund (IMF) and the Bank for International Settlements (BIS) that are used in economic analysis; and (5) To provide information to assist in the supervision of U.S. offices of foreign banks, which often are managed jointly with these branches.

Current Actions: The proposal to extend for three years, without revision, the Report of Assets and Liabilities of a Non-U.S. Branch that is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non-U.S.) Bank (FFIEC 002S) that is the subject of this notice has been approved by the FFIEC.

Request for Comment: Comments submitted in response to this Notice will be shared among the agencies and will be summarized or included in the Board's request for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden as well as other relevant aspects of the information collection requests. Comments are invited on:

(a) Whether the proposed revisions to the FFIEC 002 and the extension of the FFIEC 002S collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Board of Governors of the Federal Reserve System, November 10, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–30769 Filed 11–18–98; 8:45 am]

BILLING CODE 6210–01–P

GENERAL ACCOUNTING OFFICE

Joint Financial Management Improvement Program (JFMIP)—Federal Financial Management System Requirements (FFMSR)

[Document Nos. JFMIP–SR–98–1 & JFMIP–SR–98–2]

AGENCY: Joint Financial Management Improvement Program (JFMIP).

ACTION: Notice of document availability.

SUMMARY: the JFMIP is seeking public comment on two exposure drafts titled ''Core Financial System Requirements'' and ''Human Resources & Payroll Systems Requirements,'' both dated November 5, 1998. The exposure drafts are being issued to update the 1995 ''Core Financial System Requirements'' and the 1990 ''Personnel-Payroll System Requirements.'' The exposure drafts incorporate new JFMIP requirements for Core Financial Systems and Human Resources & Payroll Systems. They are designed to provide financial managers with Governmentwide mandatory requirements for financial systems in order to process and record financial events effectively and efficiently, and to provide complete, timely, reliable, and consistent information for decision makers and the public.

DATES: Comments are due by January 8, 1999.

ADDRESSES: Copies of the financial system requirements exposure drafts have been mailed to Agency Senior Financial Officials and are available on the JFMIP website http://www.financenet.gov/financenet/fed/jfmip/jfmipexp.htm. Comments should be addressed to JFMIP, 441 G Street NW., Room 3111, Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: Betty White, 202–512–9346, regarding the Core Financial System Requirements; and Dennis Mitchell, 202–512–5994, regarding the Human Resources & Payroll Systems Requirements.

SUPPLEMENTARY INFORMATION: The Federal Financial Management

Improvement Act of 1996 (FFMIA) mandated that agencies implement and maintain systems that comply substantially with Federal financial management systems requirements, applicable Federal accounting standards, and the U.S. Government Standard General Ledger at the transaction level. The FFMIA statute codified the JFMIP financial systems requirements documents as a key benchmark that agency systems must meet in order to be substantially in compliance with systems requirements provisions under FFMIA. To support the requirements outlined in the FFMIA, we are updating requirements documents that are obsolete and publishing additional requirements documents.

The Core Financial System Requirements document establishes standard requirements for the backbone modules of an agency's integrated financial management system. The major functions supported by a Core Financial System are: Core Financial System Management, General Ledger Management, Funds Management, Payment Management, Receipt Management, Cost Management, and Reporting. These seven functions provide common processing routines, support common data for critical financial management functions affecting the entire agency, and maintain the required financial data integrity control over financial transactions, resource balances, and other financial management systems.

This update reflects the most recent changes in laws and regulations, such as the Debt Collection Improvement Act, and clarifies previous requirements. It also incorporates requirements that were previously reflected in the technical requirements of the Financial Management System Software schedule Statement of Work. JFMIP's new Knowledgebase website can be used to identify the changes that have been made to the Core Financial System Requirements document. The new and changed requirements in the exposure draft can be easily identified with this tool. The Knowledgebase can be accessed through FinanceNet under the JFMIP Program Management Office website http://www.financenet.gov/fed/jfmip/pmo.htm. The Knowledgebase includes both mandatory requirements and value-added features. The exposure draft, however, contains only mandatory requirements on which the vendor software certification test will be based.

The Human Resources & Payroll Systems Requirements document is intended for human resources and payroll financial systems analysts, system accountants, and others who design, develop, implement, operate, and maintain financial management systems. The primary purposes for this update are to reflect: changes in statutes, regulations, and technology that have occurred since the document was originally published in May 1990, e.g., passage of the Chief Financial Officers Act of 1990, and FFMIA of 1996; changes in personnel practices brought about by the National Performance Review; and increased availability of commercial off-the-shelf software packages. This update also incorporates core functionalities of a Federal human resources system as defined by the Human Resources Technology Council.

Comments received will be reviewed and the exposure drafts will be revised as necessary. Publication of the final requirements will be mailed to agency senior financial officials and will be available on the JFMIP website.

Karen Cleary Alderman,

Executive Director, Joint Financial Management Improvement Program.

[FR Doc. 98–30941 Filed 11–18–98; 8:45 am]

BILLING CODE 1610–02–M

GENERAL SERVICES ADMINISTRATION

Public Buildings Service

Notice of Availability of Final Environmental Impact Statement; Disposition of Governors Island, Upper New York Bay, New York

Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, as implemented by the Council on Environmental Quality (40 CFR parts 1500–1508), the General Services Administration (GSA) has filed with the U.S. Environmental Protection Agency, and made available to other government and interested private parties, the Final Environmental Impact Statement (FEIS) for the disposition of surplus federal real property known as Governors Island, Upper New York Bay, New York.

The Final EIS is on file at New York City Hall, Manhattan Community District #1, Brooklyn Community District #6, Andrew Heiskell Library for the Blind and Physically Handicapped, Mid-Manhattan Library, NY Public Library-New Amsterdam Branch, NY Public Library-Carroll Gardens Branch, NY Public Library-Red Hook Branch, Monograph Acquisition Services, Colorado State University Libraries-Ft. Collins, CO and General Services Administration.

Copies of the Executive Summary of the Final EIS are available upon request. A limited number of copies of the FEIS are available to fill single copy requests. Additional information may be obtained from General Services Administration, Region 2, Attention: Peter A. Sneed, 26 Federal Plaza, New York, New York, 10278, (212) 264–3581.

Written comments regarding the FEIS may be submitted until December 14, 1998 and should be addressed to General Services Administration in care of the above noted individual.

Dated: November 4, 1998.

Robert Martin,

Acting Regional Administrator (2A).

[FR Doc. 98–30881 Filed 11–18–98; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Proposed Data Collections Available for Public Comment and Recommendations

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Officer on (202) 619–1053.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project 1. 42 CFR 50 Subpart B: Sterilization of Persons in Federally Assisted Family Planning Projects—0937–0166—Extension no Change—These regulations and informed consent procedures are associated with Federally-funded sterilization services. Selected consent forms are audited during site visits and program reviews to ensure compliance

with regulations and the protection of the rights of individuals undergoing sterilization. Burden Estimate for Consent Form—*Annual Responses:* 40,000; *Burden per Response:* one hour; *Total Burden for Consent Form:* 40,000 hours—Burden Estimate for Recordkeeping Requirement—*Number of Recordkeepers:* 4,000; *Average Burden per Recordkeeper:* 2.5 hours; *Total Burden for Recordkeeping:* 10,000 hours. *Total Burden:* 50,000 hours.

Send comments to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue S.W., Washington, DC, 20201. Written comments should be received within 60 days of this notice.

Dated: November 9, 1998.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 98–30883 Filed 11–18–98; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–99–03]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

1. Proposed Project

Prostate and Colorectal Cancer Screening Policies in the Managed Care Environment—New—The National Center for Chronic Disease Prevention and Health Promotion, Division of Cancer Prevention and Control. Prostate and colorectal cancer are among the leading causes of cancer deaths in the U.S. Prostate cancer screening has increased rapidly during the past few years although it is unknown whether screening decreases prostate cancer mortality and conflicting screening guidelines exist. Evidence suggests that colorectal cancer screening can save lives and efforts are under way to increase participation in screening. An increasing number of people are served by managed care organizations where they may receive cancer screening tests. However, for both types of cancer screening little information is available on screening guidelines for practitioners of managed care organizations (HMOs). Therefore, the Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Division of Cancer Prevention and Control, intends to conduct a survey of HMOs to determine whether prostate and colorectal cancer screening guidelines exist within HMOs, and whether these guidelines are issued on the national level for all member plans or for each plan individually, and to determine the content of these guidelines. The total cost to respondents is estimated at $13,000.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hrs.)	Total burden (in hrs.)
HMOs	550	1	0.17	92
Total				92

2. School Health Policies and Programs Study 2000 (SHPPS 2000)—New—The National Center for Chronic Disease Prevention and Health Promotion. The purpose of this request is to obtain OMB clearance to conduct a study of school health policies and programs in elementary, middle/junior, and senior high schools nationwide. A similar study was conducted in 1994 (OMB No. 0920-0340). SHPPS 2000 will assess the characteristics of eight components of school health programs at the elementary, middle/junior, and senior high school levels: health education, physical education and activity, health services, food service, school policy and environment, mental health and social services, faculty and staff health promotion, and family and community involvement. SHPPS 2000 data will be used to provide end-of-decade measures for 18 national health objectives for 2000 and as a baseline measure for at least 17 draft objectives for 2010. No other national source of data exists for these 2000 and draft 2010 objectives. The data also will have significant implications for policy and program development for school health programs nationwide. The total estimated cost to respondents $614,548.

ANNUAL BURDEN HOURS FOR SHPPS 2000 MAIN DATA COLLECTION, SPRING 2000

Questionnaire/activity	Respondent	Number of respondents	Burden hours per respondent	Total burden hours
State Health Education	State officials	51	1.00	51.0
State Physical Education and Activity	State officials	51	1.00	51.0
State Health Services	State officials	51	1.00	51.0

ANNUAL BURDEN HOURS FOR SHPPS 2000 MAIN DATA COLLECTION, SPRING 2000—Continued

Questionnaire/activity	Respondent	Number of respondents	Burden hours per respondent	Total burden hours
State Food Service	State officials	51	1.00	51.0
State Questionnaire on School Policy and Environment.	State officials	51	1.25	63.8
State Mental Health and Social Services	State officials	51	1.00	51.0
State Faculty and Staff Health Promotion	State officials	51	0.50	25.5
Assist with identifying state level respondents and with recruiting districts and schools.	State officials	51	1.00	51.0
District Health Education	District officials	1148	1.00	1148.0
District Physical Education and Activity	District officials	1148	1.00	1148.0
District Health Services	District officials	1148	1.00	1148.0
District Food Service	District officials	1148	1.00	1148.0
District Questionnaire on School Policy and Environment.	District officials	1148	1.25	1435.0
District Mental Health and Social Services	District officials	1148	1.00	1148.0
District Faculty and Staff Health Promotion	District officials	1148	0.50	574.0
Assist with identifying district and school level respondents and with recruiting schools.	District officials	350	1.00	350.0
Assist with identifying and scheduling school level respondents.	School officials	1539	1.00	1539.0
School Health Education	Health education lead teachers, principals, or designees.	1539	1.00	1539.0
School Physical Education and Activity	Physical education lead teachers, principals, or designees.	1539	1.00	1539.0
School Health Services	School nurses, principals, or designees	1539	1.00	1539.0
School Food Service	Food service managers, principals, or designees	1539	1.00	1539.0
School Questionnaire on School Policy and Environment.	Principals or designees	1539	1.50	2308.5
School Mental Health and Social Services	Counselors, principals, or designees	1539	1.00	1539.0
School Faculty and Staff Health Promotion	Principals or designees	1539	0.50	769.5
Health Education Classroom Teacher	Health education teachers (Average 1.5 per school).	2309	0.80	1847.2
Physical Education and Activity Classroom Teacher.	Physical education teachers (Average 2 per school).	3078	0.80	2462.4
Total		26,493		25,115.9

ANNUAL BURDEN HOURS FOR VALIDITY/RELIABILITY STUDY, SPRING 2000

Questionnaire	Respondent	Number of respondents	Burden hours per respondent	Total burden hours
State Health Education	State officials	32	0.25	8.0
State Physical Education and Activity	State officials	32	0.25	8.0
State Health Services	State officials	32	0.20	6.4
State Food Service	State officials	32	0.20	6.4
State Questionnaire on School Policy and Environment.	State officials	32	0.40	12.8
State Mental Health and Social Services	State officials	32	0.25	8.0
State Faculty and Staff Health Promotion	State officials	32	0.20	6.4
District Health Education	District officials	82	0.25	20.5
District Physical Education and Activity	District officials	82	0.25	20.5
District Health Services	District officials	82	0.20	16.4
District Food Service	District officials	82	0.20	16.4
District Questionnaire on School Policy and Environment.	District officials	82	0.40	32.8
District Mental Health and Social Services	District officials	82	0.25	20.5
District Faculty and Staff Health Promotion	District officials	82	0.40	32.8
School Health Education	Health education lead teachers, principals, or designees.	82	0.80	65.6
School Physical Education and Activity	Physical education lead teachers, principals, or designees.	82	0.80	65.6
School Health Services	School nurses, principals, or designees	82	0.80	65.6
School Food Service	Food service managers, principals, or designees	82	0.80	65.6
School Questionnaire on School Policy and Environment.	Principals or designees	82	1.25	102.5
School Mental Health and Social Services	Counselors, principals, or designees	82	0.80	65.6
School Faculty and Staff Health	Principals or designees	82	0.40	32.8
Promotion Health Education Classroom Teacher	Health education teachers (Average 1.5 per school).	82	0.80	65.6

ANNUAL BURDEN HOURS FOR VALIDITY/RELIABILITY STUDY, SPRING 2000—Continued

Questionnaire	Respondent	Number of respondents	Burden hours per respondent	Total burden hours
Physical Education and Activity Classroom Teacher.	Physical education teachers (Average 2 per school).	82	0.80	65.6
Total		1,536		810.4

ANNUAL BURDEN HOURS FOR SHPPS FIELD TEST, SPRING 1999

Questionnaire	Respondent	Number of respondents	Burden hours per respondent	Total burden hours
District Health Education	District officials	9	2.00	18.0
District Physical Education and Activity	District officials	9	2.00	18.0
District Health Services	District officials	9	2.00	18.0
District Food Service	District officials	9	2.00	18.0
District Questionnaire on School Policy and Environment.	District officials	9	2.50	22.5
District Mental Health and Social Services	District officials	9	2.00	18.0
District Faculty and Staff Health Promotion	District officials	9	1.00	9.0
School Questionnaire on School Policy and Environment (interview and reinterview).	Principals or designees	80	3.00	240.0
Health Education Classroom Teacher (interview and reinterview).	Health education teachers	80	1.60	128.0
Total		223		489.5

ANNUAL BURDEN HOURS ACROSS ALL SHPPS 2000 STUDY COMPONENTS

Study component	Number of respondents	Total burden hours
Main Study Data Collection, Spring 2000	26,493	25,115.9
Validity/Reliability Study, Spring 2000	1,536	810.4
Field Test, Spring 1999	223	489.5
Total	28,252	26,415.8

Kathy Cahill,

Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 98–30916 Filed 11–18–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–03–99]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Projects

1. Evaluation of the C. Everett Koop Community Health Information Center (CHIC)—New—The National Center for Chronic Disease Prevention and Health Promotion intends to conduct a survey of 25 individuals who pay for library research services from the CHIC and an additional 50 individuals who represent members of key intermediary organizations that the CHIC would like to reach but is currently not reaching. The specific topic area for this study relates to the ability of the CHIC to meet the health information needs of the general public.

The purpose of this survey is to determine:

The level of satisfaction with CHIC services among paying patrons who request services via telephone (the CHIC currently conducts a satisfaction survey with all walk-in patrons).

The level of knowledge about the CHIC among key intermediary individuals and organizations—the health information needs of key intermediary individuals and organizations.

How to market CHIC services to key intermediary individuals and organizations.

Results from this research will be used to help evaluate the effectiveness of the CHIC in meeting the health information needs of the general public. Results from this research will provide the government with information about the efficacy of health information centers. In addition, this information will also be used by the CHIC to further enhance their ability to deliver health information services to the public residing in the Delaware Valley. The total annual burden hours are 17.

Type of respondents	Number of respondents	Number of responses/ respondent	Avg. burden/ response (in hrs.)
Paying Patrons	25	1	.17
Key Intermediaries	50	1	.25

2. Childhood Lead Poisoning Prevention Program Quarterly Report (0920–0282)—Extension—The National Center for Environmental Health requests an extension of the Childhood Lead Poisoning Prevention Program Quarterly Report. Section 317A of the Public Health Service Act as amended by The Lead Contamination Control Act of 1988 and the Preventive Health Amendments of 1992, mandates that grant applicants report quarterly the number of infants and children screened for elevated blood lead levels, the number found to have elevated blood lead levels, the number and type of medical referrals made for them, and the outcome of such referrals. State and local health agencies are the principal delivery points for childhood lead screening and related medical and environmental management activities. In FY 1998, CDC awarded 41 grants to fund childhood lead poisoning prevention programs. The purpose of the quarterly report is to report data collected by CDC's grantees. The report consists of narrative and data sections. The narrative section (1) provides highlights of quarterly activities, (2) reports issues and activities that have significant impact on the program, and (3) lists objectives and discusses progress towards meeting those objectives. The data section provides (1) screening and case confirmation activities, (2) environmental inspection and hazard remediation activities, and (3) medical case management activities. The total annual burden hours are 328.

Respondents	Number of respondents	Number of responses/ respondent	Avg. burden/ response (in hrs.)
Grantees	41	4	2

Kathy Cahill,

Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–30915 Filed 11–18–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Public Health Service Activities and Research at DOE Sites; Citizens Advisory Committee; Notice of Meeting

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy Sites: Fernald Health Effects Subcommittee; Hanford Health Effects Subcommittee; Idaho National Engineering and Environmental Laboratory Health Effects Subcommittee; and Savannah River Site Health Effects Subcommittee; and the Inter-tribal Council on Hanford Health Projects: Meetings.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the National Center for Environmental Health (NCEH) and the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), and the Agency for Toxic Substances and Disease Registry (ATSDR) announce the following Federal advisory committee meetings.

Name: Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy Sites.

Times and Dates: 8 a.m.–5 p.m., December 8, 1998; 8:30 a.m.–5:30 p.m., December 9, 1998.

Place: Salt Lake City Hilton, 150 West 500 South, Salt Lake City, Utah 84101, telephone 801–532–3344, fax 801–531–0705.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 150 people.

Background: The Department of Health and Human Services (HHS) and the Department of Energy (DOE) have two Memoranda of Understanding (MOU) for public health activities and research at DOE sites. One transferred the responsibility for the management and conduct of energy-related analytic epidemiologic research to HHS, and HHS subsequently delegated program responsibility to CDC. The other is a separate MOU between ATSDR and DOE. This MOU addresses ATSDR public health responsibilities around DOE sites. In addition, ATSDR is required by law (Sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act) to conduct public health assessments, and where appropriate, other health activities, many of which are conducted at DOE sites.

Implementing these MOUs requires significant interaction with communities living in proximity to DOE sites. This committee was chartered in response to the requests by representatives of the communities surrounding DOE sites to provide consensus advice and recommendations on community concerns related to CDC's and ATSDR's activities related to the sites.

Purpose: This committee provides advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at respective DOE sites. Activities focus on providing a forum for community, American Indian Tribal, and labor interaction, and serve as a vehicle for communities, American Indian Tribes, and labor to express concerns and provide advice and recommendations to CDC and ATSDR.

Matters to be Discussed: Agenda items will include presentations from each of the four established subcommittees; status of the Advisory Committee for Energy-Related Epidemiologic Research Subcommittee for Community Affairs; up to four break-out sessions with presentations post break-out; proposed evaluation of the health effects subcommittees; group discussions and public comments.

Name: Fernald Health Effects Subcommittee (FHES).

Time and Date: 8:30 a.m.–4 p.m., December 10, 1998.

Place: Salt Lake City Hilton, 150 West 500 South, Salt Lake City, Utah 84101, telephone 801–532–3344, fax 801–531–0705.

Status: Open to the public, limited only by the space available. The meeting room will accommodate approximately 75 people.

Purpose: This subcommittee reviews and provides consensus advice to CDC and ATSDR on their public health activities and research at the Fernald, Ohio, site.

Matters to be Discussed: Agenda items include an update on worker studies related to the Fernald site from NIOSH; an update on risk assessment from NCEH; selection of FHES representative for an evaluation project; and subcommittee discussion.

Name: Inter-tribal Council on Hanford Health Projects (ICHHP) in Association with the Hanford Health Effects Subcommittee (HHES).

Time and Date: 8 a.m.–12 noon, December 10, 1998.

Place: Salt Lake City Hilton, 150 West 500 South, Salt Lake City, Utah 84101, telephone 801–532–3344, fax 801–531–0705.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 75 people.

Purpose: The purpose of this meeting is to address issues that are unique to tribal involvement with the HHES, including considerations regarding a proposed medical monitoring program and discussion of cooperative agreement activities designed to provide support for capacity-building activities in tribal environmental health expertise and for tribal involvement in HHES.

Matters to be Discussed: Agenda items will include a dialogue on issues that are unique to tribal involvement with the HHES. This will include exploring cooperative agreement activities in environmental health capacity building and providing support for tribal involvement in and representation on the HHES.

Name: Hanford Health Effects Subcommittee (HHES).

Times and Dates: 1 p.m.–5 p.m., December 10, 1998; 8:30 a.m.–3:30 p.m., December 11, 1998.

Place: Salt Lake City Hilton, 150 West 500 South, Salt Lake City, Utah 84101, telephone 801–532–3344, fax 801–531–0705.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 75 people.

Purpose: This subcommittee reviews and provides consensus advice to CDC and ATSDR on their public health activities and research at the Hanford Nuclear Reservation.

Matters to be Discussed: Agenda items will include an update from the ICHHP; the review and approval of Minutes of the previous meeting; updates from ATSDR, NCEH, and NIOSH; reports from the Outreach, Public Health Assessment, Public Health Activities, and Studies Workgroups; and other issues and topics as necessary.

Name: Idaho National Engineering and Environmental Laboratory Health Effects Subcommittee (INEELHES).

Time and Date: 8:30 a.m.–5:30 p.m., December 10, 1998.

Place: Salt Lake City Hilton, 150 West 500 South, Salt Lake City, Utah 84101, telephone 801–532–3344, fax 801–531–0705.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 75 people.

Purpose: This subcommittee reviews and provides consensus advice to CDC and ATSDR on their public health activities and research at the INEEL.

Matters to be Discussed: Agenda items include an update on the status of research at the INEEL, discussion on document management at DOE; and subcommittee discussions.

Name: Savannah River Site Health Effects Subcommittee (SRSHES).

Time and Date: 8:30 a.m.–5:30 p.m., December 10, 1998.

Place: Salt Lake City Hilton, 150 West 500 South, Salt Lake City, Utah 84101, telephone 801–532–3344, fax 801–531–0705.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 75 people.

Purpose: This subcommittee reviews and provides consensus advice to CDC and ATSDR on their public health activities and research at the SRS.

Matters to be Discussed: Agenda items include an update from ATSDR on its research; the schedule for release to the public of the Phase II report; presentations by NCEH, ATSDR, and NIOSH on the design of their respective web pages; and subcommittee discussion.

All agenda items are subject to change as priorities dictate.

FOR FURTHER INFORMATION CONTACT: Information on the HHES and the ICHHP may be obtained from Leslie C. Campbell, Executive Secretary, HHES, or Marilyn Palmer, Committee Management Specialist, Division of Health Assessment and Consultation, ATSDR, 1600 Clifton Road, NE (E–56), Atlanta, GA 30333, telephone 1–800–447–1544, fax 404–639–6075. Information on the FHES may be obtained from Steven A. Adams, Executive Secretary, FHES, Radiation Studies Branch (RSB), Division of Environmental Hazards and Health Effects (DEHHE), NCEH, CDC, 4770 Buford Highway, NE, (F–35), Atlanta, Georgia 30341–3724, telephone 770–488–7040, fax 770–488–7044. Information on the INEELHES may be obtained from Arthur J. Robinson, Jr., Executive Secretary, INEELHES, RSB, DEHHE, NCEH, CDC, 4770 Buford Highway, NE, (F–35), Atlanta, Georgia 30341–3724, telephone 770–488–7040, fax 770–488–7044. Information on the SRSHES may be obtained from Paul G. Renard, Executive Secretary, SRSHES, RSB, DEHHE, NCEH, CDC, 4770 Buford Highway, NE, (F–35), Atlanta, Georgia 30341–3724, telephone 770–488–7040, fax 770–488–7044.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and ATSDR.

Dated: November 13, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–30913 Filed 11–18–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–1000]

Danbury Pharmacal, Inc.; Withdrawal of Approval of 61 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 61 abbreviated new drug applications (ANDA's). Danbury Pharmacal, Inc., notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

EFFECTIVE DATE: December 21, 1998.

FOR FURTHER INFORMATION CONTACT: Olivia A. Pritzlaff, Center for Drug

Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: Danbury Pharmacal, Inc., 131 West St., Danbury, CT 16810, has informed FDA that the drug products listed in the following table are no longer marketed and has requested that FDA withdraw approval of the applications. Danbury Pharmacal, Inc., has also, by its request, waived its opportunity for a hearing.

ANDA No.	Drug
63–082	Clindamycin Hydrochloride Capsules USP, 75 milligrams (mg)
71–098	Propranolol Hydrochloride Tablets USP, 60 mg
71–183	Propranolol Hydrochloride Tablets USP, 90 mg
71–494	Oxazepam Tablets USP, 15 mg
71–498	Propranolol Hydrochloride and Hydrochlorothiazide Tablets USP, 40 mg/25 mg
71–501	Propranolol Hydrochloride and Hydrochlorothiazide Tablets USP, 80 mg/25 mg
71–905	Ibuprofen Tablets USP, 200 mg
72–113	Haloperidol Tablets USP, 10 mg
72–134	Perphenazine and Amitriptyline Hydrochloride Tablets USP, 4 mg/25 mg
72–135	Perphenazine and Amitriptyline Hydrochloride Tablets USP, 4 mg/50 mg
72–353	Haloperidol Tablets USP, 20 mg
72–539	Perphenazine and Amitriptyline Hydrochloride Tablets USP, 2 mg/10 mg
72–540	Perphenazine and Amitriptyline Hydrochloride Tablets USP, 4 mg/10 mg
72–541	Perphenazine and Amitriptyline Hydrochloride Tablets USP, 2 mg/25 mg
72–981	Fenoprofen Calcium Capsules USP
72–982	Fenoprofen Calcium Capsules USP
72–996	Indomethacin Capsules USP, 25 mg
72–997	Indomethacin Capsules USP, 50 mg
80–393	Reserpine Tablets USP, 0.25 mg
80–522	Isoniazid Tablets USP, 50 mg
80–523	Isoniazid Tablets USP, 100 mg
80–679	Reserpine Tablets USP, 0.1 mg
80–696	Chlorpheniramine Maleate Tablets USP, 4 mg
80–749	Reserpine Tablets USP, 1 mg
80–905	Phenytoin Sodium Capsules USP, 100 mg
80–907	Rauwolfia Serpentina Tablets USP, 50 mg
80–908	Propoxyphene Hydrochloride Capsules USP, 65 mg
80–914	Rauwolfia Serpentina Tablets USP, 100 mg
83–029	Propantheline Bromide Tablets USP, 15 mg
83–123	Brompheniramine Maleate Tablets USP, 4 mg
83–305	Niacin Tablets USP, 500 mg
83–712	Promethazine Hydrochloride Tablets USP, 12.5 mg
83–847	Trichlormathiazide Tablets USP, 2 mg
83–855	Trichlormethiazide Tablets USP, 4 mg
84–274	Meprobamate Tablets USP, 600 mg
84–347	Dicyclomine Hydrochloride Capsules USP, 10 mg
84–362	Glutethimide Tablets USP, 500 mg
84–*402	Bethanechol Chloride Tablets USP, 5 mg
84–602	Dicyclomine Hydrochloride Tablets USP, 20 mg
85–094	Triprolidine Hydrochloride Tablets USP, 2.5 mg
85–584	Quinidine Sulfate Tablets USP, 100 mg
86–086	Pentaerythritol Tetranitrate Tablets USP, 20 mg
86–580	Cyproheptadine Hydrochloride Tablets USP, 4 mg
86–900	Glycopyrrolate Tablets USP, 2 mg
86–901	Chlorzoxazone Tablets USP, 250 mg
86–902	Glycopyrrolate Tablets USP, 1 mg
87–419	Dipyridamole Tablets USP, 25 mg
87–432	Dipyridamole Tablets USP, 75 mg
87–550	Butalbital and Acetaminophen, 50 mg/325 mg
87–667	Sulfinpyrazone Tablets USP, 100 mg
87–767	Hydroxyzine Pamoate Capsules USP (equivalent to 50 mg Hydroxyzine Hydrochloride)
87–790	Hydroxyzine Pamoate Capsules USP (equivalent to 100 mg Hydroxyzine Hydrochloride)
87–874	Carisoprodol Compound Tablets
88–620	Amitriptyline Hydrochloride Tablets USP, 10 mg
88–621	Amitriptyline Hydrochloride Tablets USP, 25 mg
88–622	Amitriptyline Hydrochloride Tablets USP, 50 mg
88–633	Amitriptyline Hydrochloride Tablets USP, 75 mg
88–634	Amitriptyline Hydrochloride Tablets USP, 100 mg
88–635	Amitriptyline Hydrochloride Tablets USP, 150 mg
88–755	Thioridazine Hydrochloride Tablets USP, 25 mg
88–800	Dipyridamole Tablets USP, 50 mg

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.82), approval of the applications listed in the table in this document, and all amendments and supplements thereto, is hereby withdrawn, effective December 21, 1998.

Dated: November 4, 1998.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 98–30878 Filed 11–18–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98E–0781]

Determination of Regulatory Review Period for Purposes of Patent Extension; Avapro®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Avapro® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6620.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Avapro® (irbesartan). Avapro® is indicated for the treatment of hypertension. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Avapro® (U.S. Patent No. 5,270,317) from Sanofi, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated October 7, 1998, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Avapro® represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Avapro® is 1,616 days. Of this time, 1,246 days occurred during the testing phase of the regulatory review period, while 370 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective*: April 30, 1993. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on April 30, 1993.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act*: September 26, 1996. FDA has verified the applicant's claim that the new drug application (NDA) for Avapro® (NDA 20–757) was initially submitted on September 26, 1996.

3. *The date the application was approved*: September 30, 1997. FDA has verified the applicant's claim that NDA 20–757 was approved on September 30, 1997.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 194 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before January 19, 1999, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before May 18, 1999, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 4, 1998.

Thomas J. McGinnis,

Deputy Associate Commissioner for Health Affairs.

[FR Doc. 98–30990 Filed 11–18–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICE

Food and Drug Administration

Circulatory System Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Circulatory System Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on December 7, 1998, 8 a.m. to 5 p.m.

Location: Holiday Inn, Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: John E. Stuhlmuller, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8243, ext. 157, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12625. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss and make recommendations on clinical trial requirements for future approval of coronary stents. An outline of the types of issues to be discussed by the committee can be found on the FDA website at ''http://www.fda.gov/cdrh/upadvmtg.html''. Single copies of this outline are also available to the public by contacting the Division of Small Manufacturers Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 1–800–638–2041 or 301–443–6597.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by November 30, 1998. Oral presentations from the public will be scheduled between approximately 8 a.m. and 8:30 a.m., on December 7, 1998. Near the end of committee deliberations, a 30-minute open public hearing will be conducted for interested persons to address issues specific to the topics before the committee. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 30, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 12, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–30936 Filed 11–18–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0336]

Agency Information Collection Activities; Announcement of OMB Approval; Premarket Notification Submission 510(k), Subpart E

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Premarket Notification Submission 510(k), Subpart E'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

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 the **Federal Register** of September 1, 1998 (63 FR 46462), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

OMB has now approved the information collection and has assigned OMB control number 0910–0120. The approval expires on October 31, 2001.

Dated: November 11, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–30879 Filed 11–18–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0168]

Agency Information Collection Activities; Announcement of OMB Approval; Supplements to Premarket Approval Applications for Medical Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Supplements to Premarket Approval Applications for Medical Devices'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

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 the **Federal Register** of October 8, 1998 (63 FR 54042), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0385. The approval expires on October 31, 2001.

Dated: November 11, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–30989 Filed 11–18–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–1001]

Draft Guidance for Industry: In Vivo Drug Metabolism/Drug Interaction Studies—Study Design, Data Analysis, and Recommendations for Dosing and Labeling; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''In Vivo Drug Metabolism/Drug Interaction Studies—Study Design, Data Analysis, and Recommendations for Dosing and Labeling.'' This draft guidance is intended to provide recommendations to sponsors and applicants of new drug applications (NDA's) and biologics license applications (BLA's) for therapeutic biologics (hereafter drugs) on carrying out in vivo drug metabolism and metabolic drug-drug interaction studies. The draft guidance reflects the current view that the metabolism of a new drug should be defined during drug development and that its interactions with other drugs should be explored as part of an adequate assessment of the safety and effectiveness of the drug.

DATES: Written comments may be submitted on the draft guidance by January 19, 1999. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of ''In Vivo Drug Metabolism/Drug Interaction Studies—Study Design, Data Analysis, and Recommendations for Dosing and Labeling'' are available on the Internet at ''http://www.fda.gov/cder/guidance/index.htm'' or ''http://www.fda.gov/cber/guidelines.htm''. Submit written requests for single copies of the draft guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857; or the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), 1401 Rockville Pike, Rockville, MD 20852–1448, FAX 888–CBERFAX or 301–827–3844. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Shiew Mei Huang, Center for Drug Evaluation and Research (HFD–850), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5671, or David Green, Center for Biologics Evaluation and Research (HFM–579), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–5349.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance for industry entitled ''In Vivo Drug Metabolism/Drug Interaction Studies—Study Design, Data Analysis, and Recommendations for Dosing and Labeling.'' Previous guidance from FDA on the use of in vitro approaches to study metabolism and metabolic drug-drug interactions is available in a document entitled ''Drug Metabolism/Drug Interaction Studies in the Drug Development Process: Studies in Vitro.'' The present guidance should be viewed as a companion to this earlier guidance. The present guidance discusses study design, choice of interacting drugs, and data analysis and provides recommendations for dosing and labeling.

This draft level 1 guidance document is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). It represents the agency's current thinking on drug metabolism and drug-drug interactions. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may, at any time, submit written comments on the draft guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 13, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–30937 Filed 11–18–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0997]

Draft Guidance for Industry on Metered Dose Inhaler (MDI) and Dry Powder Inhaler (DPI) Drug Products; Chemistry, Manufacturing, and Controls Documentation; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Metered Dose Inhaler (MDI) and Dry Powder Inhaler (DPI) Drug Products; Chemistry, Manufacturing, and Controls Documentation.'' This draft document provides guidance for industry on the chemistry, manufacturing, and controls (CMC) documentation to be submitted in new drug applications (NDA's) and abbreviated new drug applications (ANDA's) for metered dose inhalation aerosols, metered dose nasal aerosols, and inhalation powders.

DATES: Written comments may be submitted on the draft guidance document by February 17, 1999. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of this draft guidance are available on the Internet at ''http://www.fda.gov/cder/guidance/index.htm.'' Written requests for single copies of the draft guidance should be submitted to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Guirag Poochikian, Center for Drug Evaluation and Research (HFD–570), Food and Drug Administration, 5600 Fishers Lane, rm. 10B45, Rockville, MD 20857, 301–827–1050.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance for industry entitled ''Metered Dose Inhaler (MDI) and Dry Powder Inhaler (DPI) Drug Products; Chemistry, Manufacturing, and Controls Documentation.'' This draft guidance sets forth information that should be provided to ensure continuing drug product quality and performance characteristics for MDI's and DPI's. In addition to providing guidance on CMC documentation to be submitted in NDA's and ANDA's for DPI's and MDI's, the draft guidance covers CMC information recommended for inclusion in the application with regard to the components, manufacturing process, and the controls associated with each of these areas. The document does not address inhalation solutions or aqueous nasal sprays.

FDA intends to sponsor a public meeting in 1999 on MDI and DPI drug products. The comments submitted on

this draft guidance will be used to help develop the agenda for this meeting.

This draft level 1 guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). The draft guidance represents the agency's current thinking on CMC documentation to be submitted in NDA's and ANDA's for metered dose inhalation aerosols, metered dose nasal aerosols, and inhalation powders. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statute, regulations, or both.

Interested persons may submit written comments on the draft guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 13, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–30938 Filed 11–18–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Supplemental Grant Award to the National Research and Training Center at the University of Illinois, Chicago, IL

AGENCY: Center for Mental Health Services (CMHS), Substance Abuse and Mental Health Services Administration (SAMHSA), DHHS.

ACTION: Planned supplemental grant award to the Employment Intervention Demonstration Program (EIDP) Coordinating Center at the University of Illinois, Chicago, Illinois.

SUMMARY: This notice is to provide information to the public concerning a planned supplemental award by CMHS/SAMHSA to the existing grant to the National Research and Training Center (NRTC). This award will provide additional support for the EIDP Coordinating Center in order to expand coordination, data management, and dissemination of the EIDP study results. Upon receipt of a satisfactory application that is recommended for approval by an Initial Review Group and the CMHS National Advisory Council, up to $600,000 in Federal funds may be awarded to this organization over the remaining project period of the existing EIDP Coordinating Center grant which is scheduled to end on May 31, 2000.

This is not a formal request for applications. Grant funds will be provided only to the organization named above.

Authority/Justification: This grant will be made under the authority of Section 520A of the Public Health Service Act, as amended (42 U.S.C. 290bb–32).

The Catalog of Federal Domestic Assistance (CFDA) number is 93.125.

The goal of the EIDP is the generation of knowledge about effective approaches for enhancing employment for adults with severe mental illnesses through support for the implementation and evaluation of promising employment intervention programs. In FY 1995 the National Research and Training Center competed successfully to be the Coordinating Center for an expected EIDP involving approximately 4 sites. However, CMHS subsequently determined the program should fund 8 sites to maximize the potential benefits of the program. The purpose of this supplemental award is to fund the additional coordination and data management requirements imposed on NRTC for a program which has expanded to 8 sites and, building upon the expertise gained by the Coordinating Center during the first years of the study, to develop and implement a knowledge dissemination strategy for all 8 (rather than 4) sites. The supplemental work is inextricably linked to the current activities that the NRTC is already performing for the EIDP.

For the above reasons, only an application from the National Research and Training Center will be considered for this program.

CONTACT: Neal B. Brown, Chief, Community Support Programs Branch, Division of Knowledge Development and Systems Change, CMHS, SAMHSA, 5600 Fishers Lane, Room 11C–22, Rockville, MD 20857; (301) 443–3653.

Dated: November 13, 1998.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 98–30940 Filed 11–18–98; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Center for Mental Health Services (CMHS) National Advisory Council in December, 1998.

A portion of the meeting will be open and will include a roll call, CMHS Director's Report, discussion of the HIV/AIDS Services Research Demonstration Program, report from the National Mental Health Association, update from the Consumer Affairs Specialist and a report on Mental Health U.S. 1998. Public comments are welcome during the open session. Please communicate with the individual listed as contact below for guidance. If anyone needs special accommodations for persons with disabilities please notify the contact listed below.

The meeting will include the review, discussion, and evaluation of individual grant applications, and detailed discussion of information about the CMHS procurement plans. Therefore a portion of the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 552b(c)(3), and (6) and 5 U.S.C. App. 2, § 10(d).

A summary of the meeting and a roster of Council members may be obtained from: Anne Mathews-Younes, Ed.D., Executive Secretary, CMHS National Advisory Council, 5600 Fishers Lane, Room 18 C–07, Rockville, Maryland 20857. Telephone: (301) 443–0554.

Substantive program information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Center for Mental Health Services National Advisory Council.

Meeting Date: December 3–4, 1998.

Place: Georgetown University Conference Center, 3800 Reservoir Road, NW, Washington, D.C. 20057.

Open: December 3, 1998, 9:30 a.m.—5:00 p.m.; December 4, 1998, 9:00 a.m—1:00 p.m.

Closed: December 3, 1998, 9:00 a.m. to 9:30 a.m.

Contact: Anne Mathews-Younes, Room 18–07, Parklawn Building, Telephone: (301) 443–0554 and FAX: (301) 443–7912.

Dated: November 18, 1998.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 98–30939 Filed 11–18–98; 8:45 am]

BILLING CODE 4162–20–P

INTER-AMERICAN FOUNDATION

Board Meeting; Sunshine Act

TIME AND DATE: December 2, 1998, 11:30 a.m.–3:30 p.m.

PLACE: 901 N. Stuart Street, Tenth Floor, Arlington, Virginia 22203.

MATTERS TO BE DISCUSSED:

1. Approval of the Minutes of the June 8, 1998, Meeting of the Board of Directors.
2. Report on Impact of Hurricane Mitch and Foundation Response.
3. Report on Management Information System and Results Collection.
4. Report on External Affairs Initiative.
5. Report by the Board Audit Committee.

CONTACT PERSON FOR MORE INFORMATION: Adolfo A. Franco, Secretary to the Board of Directors, (703) 841–3894.

Dated: November 17, 1998.

Adolfo A. Franco,

Sunshine Act Officer.

[FR Doc. 98–31098 Filed 11–17–98; 3:44 pm]

BILLING CODE 7025–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*).

Applicant: Avian Biotech International, Tallahassee, FL, PRT–004419.

The applicant requests a permit to import blood, tissue, and feather samples from captive-hatched birds worldwide for the purpose of scientific research of avian disease and sex determination.

Applicant: University of Miami, Miami, FL, PRT–004843.

The applicant requests a permit to import blood samples from birds housed at the Loro Parque, Canary Islands, Spain for the purpose of scientific research.

Applicant: Black Hills Reptile Gardens, Inc., Rapid City, SD, PRT–004418.

The applicant requests a permit to import 9 neonate West African dwarf crocodiles (*Osteolaemus tetrapsis tetrapsis*) from the Calgary Zoo, Canada for the purpose of enhancement to the propagation and survival of the species through captive breeding.

Applicant: American Museum of Natural History, NY,NY, PRT–004540.

The applicant requests a permit to import salvaged material from three geometric tortoises (*Psammobates geometricus*) from the Western Cape Nature Conservation Authority, South Africa for the purpose of enhancement of the species through scientific research.

Applicant: Robert I. Hale, Hillsboro, OR PRT–005021.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the enhancement of the survival of the species.

Applicant: Adriano Freire, Pembroke Pines, FL, PRT–005001.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the enhancement of the survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the above address within 30 days of the date of publication of this notice.

Dated: November 13, 1998.

MaryEllen Amtower,

Acting Chief, Branch Of Permits, Office of Management Authority.

[FR Doc. 98–30889 Filed 11–18–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–933–99–1320–01; COC 59748]

Notice of Public Hearing and Request for Comments on Environmental Assessment, Maximum Economic Recovery Report, and Fair Market Value; Application for Competitive Coal Lease COC 59748; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public hearing.

SUMMARY: Bureau of Land Management, Colorado State Office, Lakewood, Colorado, hereby gives notice that a public hearing will be held to receive comments on the environmental assessment, maximum economic recovery, and fair market value of federal coal to be offered. An application for coal lease was filed by Juniper Coal Company requesting the Bureau of Land Management offer for competitive lease 14,785.64 acres of federal coal in Routt County, Colorado.

DATES: The public hearing will be held at 7 p.m., December 9, 1998. Written comments should be received no later than December 23, 1998.

ADDRESSES: The public hearing will be held in the Little Snake Field Office, 455 Emerson St., Craig, Colorado 81625. Written comments should be addressed to the Bureau of Land Management, Little Snake Field Office, at the address given above.

FOR FURTHER INFORMATION CONTACT: John Husband, Field Office Manager, Little Snake Field Office at the address above, or by telephone at (970) 826–5089.

SUPPLEMENTARY INFORMATION: Bureau of Land Management, Colorado State Office, Lakewood, Colorado, hereby gives notice that a public hearing will be held on December 9, 1998, at 7 p.m., in the Little Snake Field Office at the address given above.

An application for coal lease was filed by Juniper Coal Company requesting the Bureau of Land Management offer for competitive lease federal coal in the lands outside established coal production regions described as:

T. 5 N., R. 88 W., 6th P.M.
- Sec. 4, SE¼NW¼, and SW¼;
- Sec. 5, lot 5, SW¼NE¼, E½,SW¼, SW¼SW¼, and SE¼;
- Sec. 7, lot 17, SW¼NE¼, and SE¼; Tract 39, lots 15, and 16;
- Sec. 8, all;
- Sec. 9, W½W½, NE¼NW¼, and SE¼SW¼;
- Sec. 17, N½N½, S½NW¼, and S½SW¼;
- Sec. 18, lots 5, 12, 13, 16, and 17, N½NE¼, and SW¼NE¼;

Tract 39, lots 6, and 8;
Tract 40, lots 7, 9 to 11, inclusive, 14, and 15;
Sec. 19, lots 7, 8, 13, and 14;
Sec. 20, SW¼NE¼, NW¼, and W½SE¼;
Sec. 30, lots 7, 8, 13, and 14;
Sec. 31, lots 7, 8, 15, and 16.
T. 5 N., R. 89 W., 6th P.M.
Sec. 3, lots 19 to 24, inclusive;
Tract 42, lots 17, 18, 25, and 27;
Tract 45, lot 26;
Sec. 4, SE¼;
Sec. 9, lots 1, 2, and 7 to 10, inclusive;
Sec. 10, lots 2 to 15, inclusive;
Tract 45, lot 1;
Sec. 11, lots 6, 8, 10, and 14 to 19, inclusive;
Tract 37, lots 3 to 5, inclusive, 7, 9, 11, 12, and 20;
Tract 47, lots 13, and 21;
Sec. 12, lots 4 to 6, inclusive, and 9 to 11, inclusive;
Tract 47, lots 7, and 8;
Sec. 13, lots 1 to 3, inclusive, and 5 to 17, inclusive;
Tract 47, lot 4;
Sec. 14, lots 2, 3, and 5 to 17, inclusive;
Tract 47, lot 1;
Tract 52, lots 4, and 10;
Sec. 15, lots 1 to 16, inclusive;
Sec. 16, lots 3, 4, 9, and 10, inclusive;
Sec. 21, NE¼, and S½;
Sec. 22, all;
Sec. 23, all;
Sec. 24, all;
Sec. 25, all;
Sec. 26, all;
Sec. 27, all;
Sec. 28, all;
Sec. 33, N½;
Sec. 34, N½;
Sec. 35, N½;
Sec. 36, all.
T. 6 N., R. 88 W., 6th P.M.
Sec. 32, SE¼NE¼, E½SE¼, and SW¼SE¼;
Sec. 33, N½, and N½S½;
Sec. 34, W½NE¼, E½NW¼, NE¼SW¼, N½SE¼, and SE¼SE¼;
Sec. 35, SW¼, N½SE¼, SW¼SE¼.

Containing approximately 14, 785.64 acres, more or less.

The coal resource to be offered is limited to coal recoverable by underground mining methods.

The purpose of the hearing is to obtain public comments on the environmental assessment and on the following items:

(1) The method of mining to be employed to obtain maximum economic recovery of the coal,

(2) The impact that mining the coal in the proposed leasehold may have on the area, and

(3) The methods of determining the fair market value of the coal to be offered.

Written requests to testify orally at the December 9, 1998, public hearing should be received at the Little Snake Field Office prior to the close of business December 9, 1998. Those who indicate they wish to testify when they register at the hearing may have an opportunity if time is available.

In addition, the public is invited to submit written comments concerning the fair market value and maximum economic recovery of the coal resource. Public comments will be utilized in establishing fair market value for the coal resource in the described lands. Comments should address specific factors related to fair market value including, but not limited to:

1. The quality and quantity of the coal resource.

2. The price that the mined coal would bring in the market place.

3. The coast of producing the coal.

4. The interest rate at which anticipated income streams would be discounted.

5. Depreciation and other accounting factors.

6. The mining method or methods which would achieve maximum economic recovery of the coal.

7. Documented information on the terms and conditions of recent and similar coal land transactions in the lease area, and

8. Any comparable sales data of similar coal lands.

Should any information submitted as comments be considered to be proprietary by the commenter, the information should be labeled as such and stated in the first page of the submission. Written comments on the environmental assessment, maximum economic recovery, and fair market value should be sent to the Little Snake Field Office at the above address prior to close of business on December 23, 1998.

Substantive comments, whether written or oral, will receive equal consideration prior to any lease offering.

The Draft Environmental Assessment and Maximum Economic Recovery Report are available from the Little Snake Field Office upon request A copy of the draft Environmental Assessment, the Maximum Economic Recovery Report, the case file, and the comments submitted by the public, except those portions identified as proprietary by the commenter and meeting exemptions stated in the Freedom of Information Act, will be available for public inspection at the Colorado State Office, 2850 Youngfield, Lakewood, Colorado, 80215.

Dated: November 10, 1998.

Karen A. Purvis,

Solid Minerals Team, Resource Services.

[FR Doc. 98–30971 Filed 11–18–98; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan, Environmental Impact Statement, Fort Davis National Historic, Texas

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of intent to prepare an environmental impact statement for the General Management Plan, Fort Davis National Historic Site.

SUMMARY: Under the provisions of the National Environmental Policy Act, the National Park Service is preparing an environmental impact statement for the General Management Plan for Fort Davis National Historic Site. This statement will be approved by the Regional Director, Intermountain Region.

The plan is needed to guide the protection and preservation of the natural and cultural environments considering a variety of interpretive and recreational visitor experiences that enhance the enjoyment and understanding of the park resources.

The effort will result in a comprehensive general management plan that encompasses preservation of natural and cultural resources, visitor use and interpretation, roads, and facilities. In cooperation with local and national interests, attention will also be given to resources outside the boundaries that affect the integrity of park resources. Alternatives to be considered include no-action, the preferred alternative, and other alternatives addressing the following questions:

How can we best protect what is important for preserving the park and providing for visitor use for present and future generations?

What level and type of use is appropriate to meet the purpose and significance of the park?

What facilities are needed to meet the mission goals of the park regarding park operations, visitor use and interpretation, natural resource management, and partnerships?

What boundary adjustments have been made that are feasible to the National Park Service and enhance and support the purpose and significance of the park?

A scoping brochure has been prepared outlining the issues identified to date. After, December 15, 1998, copies of that information can be obtained at the general management plan website: *http://www.nps.gov/planning/foda* or from, Superintendent, Fort Davis National Historic Site, P.O. Box 1456, Fort Davis,

Texas 79734. The comment period for issue identification will close on February 15, 1999.

FOR FURTHER INFORMATION CONTACT: Contact Superintendent, Jerry Yarbrough, Fort Davis National Historic Site, (915) 426–3224, ext. 11.

Dated: October 28, 1998.

John A. King,

Regional Director, Intermountain Region.

[FR Doc. 98–30959 Filed 11–18–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan; Pinnacles National Monument, California; Notice of Intent To Prepare an Environmental Impact Statement

SUMMARY: The National Park Service will prepare a General Management Plan/Environmental Impact Statement (GMP/EIS) for Pinnacles National Monument, California and initiate the scoping process for this document. This notice is in accordance with 40 CFR 1501.7 and 40 CFR 1508.22, of the regulations of the President's Council on Environmental Quality for the National Environmental Policy Act of 1969, Public Law 91–190.

BACKGROUND: The purpose of the GMP/EIS will be to state the management philosophy for the park and provide strategies for addressing major issues facing the area. Two types of strategies will be presented in the GMP: (1) Those required to manage and preserve cultural and natural resources; and (2) those required to provide for safe, accessible and appropriate use of those resources by visitors. Based on these strategies, the GMP will identify the programs, actions and support facilities needed for their implementation.

Persons wishing to comment or express concerns on the management issues and future management direction of Pinnacles National Monument should address these to the Superintendent, Pinnacles National Monument, 5000 Highway 146, Paicines, California 95043–9770. Questions regarding the plan should be addressed to the superintendent either by mail to the above address, or by telephone at (831) 389–4485. Comments on the scoping of the proposed GMP/EIS should be received no later than December 15, 1998.

Public scoping meetings to receive comments and suggestions on the plan will be held in November and December in communities in the vicinity of the park. The time and location of these meetings will be announced in the local and regional media.

The responsible official is John J. Reynolds, Regional Director, Pacific West Region, National Park Service. The draft GMP/EIS is expected to be available for public review in January, 2000, and the final GMP/EIS and Record of Decision completed in mid-summer 2000.

Dated: November 4, 1998.

John Reynolds,

Regional Director, Pacific West Region.

[FR Doc. 98–30960 Filed 11–18–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Death Valley National Park; Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Death Valley National Park Advisory Commission will be held December 1 and 2, 1998; assemble at 8:30 a.m. at the Quality Inn, 1520 East Main Street, Barstow, California on December 1; assemble at 8:30 a.m. at the Board Room, Barstow College, 2700 Barstow Road, Barstow, California on December 2.

The main agenda will include:

- Overview of the General Management Plan (GMP).
- Discussion of GMP alternatives.
- Items for Discussion at Upcoming Meetings.
- Election of Commission Chair and Vice-Chair.

The Advisory Commission was established by Public Law 03–433 to provide for the advice on development and implementation of the General Management Plan.

Members of the Commission are Janice Allen, Kathy Davis, Michael Dorame, Mark Ellis, Pauline Esteves, Stanley Haye, Sue Hickman, Cal Jepson, Joan Lolmaugh, Gary O'Connor, Alan Peckham, Michael Prather, Robert Revert, Wayne Schulz, and Gilbert Zimmerman.

This meeting is open to the public.

Marian O'Dea,

Acting Superintendent, Death Valley National Park.

[FR Doc. 98–30961 Filed 11–18–98; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–399]

General Agreement on Trade in Services: Examination of the Schedules of Commitments Submitted by African Trading Partners

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: November 6, 1998.

SUMMARY: Following receipt on October 15, 1998, of a request from the Office of the United States Trade Representative (USTR), the Commission instituted investigation No. 332–399, General Agreement on Trade in Services: Examination of the Schedules of Commitments Submitted by African Trading Partners, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

FOR FURTHER INFORMATION: Information on service industries may be obtained from Mr. Richard Brown, Office of Industries (202–205–3438) and Mr. William Chadwick, Office of Industries (202–205-3390); economic aspects, from Mr. Hugh Arce, Office of Economics (202–205–3234); and legal aspects, from Mr. William Gearhart, Office of the General Counsel (202–205–3091). The media should contact Ms. Margaret O'Laughlin, Office of External Relations (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202–205–1810).

Background

As requested by the USTR in a letter dated October 9, 1998, the Commission, pursuant to section 332(g) of the Tariff Act of 1930, has instituted an investigation and will prepare a report that (1) examines the content of schedules of commitments under the General Agreement on Trade in Services (GATS) for the countries specified below, explaining the commitments in non-technical language; and (2) seeks to identify the potential benefits and limitations of foreign commitments. The Commission will examine sector-specific commitments scheduled by Côte D'Ivoire, Egypt, Ghana, Kenya, Malawi, Mauritius, Morocco, Nigeria, Senegal, South Africa, Tunisia, Zambia, and Zimbabwe, with respect to the following industries:

- Distribution services (defined as wholesaling, retailing, and franchising services);

- Education services;
- Communication services (defined as basic and enhanced telecommunication, audiovisual, and courier services);
- Health care services;
- Professional services (defined as accounting, advertising, and legal services);
- Architectural, engineering, and construction (AEC) services;
- Land-based transport services (defined as rail and trucking services); and
- travel and tourism services.

In addition, the Commission will examine horizontal commitments relevant to the specified industries, such as those regarding investment, and temporary entry and stay of foreign workers. As requested by the USTR, the Commission plans to deliver its report to the USTR by October 15, 1999.

The investigation is the fifth in a series of Commission investigations requested by USTR. In the earlier reports, the Commission examined the commitments scheduled by selected trading partners with respect to all the industries delineated above, with the sole exception of basic telecommunication services. The four previous reports are: General Agreement on Trade in Services: Examination of the Schedules of Commitments Submitted by Eastern Europe, the European Free Trade Association, and Turkey (investigation No. 332–385, USITC Publication 3127, September 1998); General Agreement on Trade in Services: Examination of the Schedules of Commitments Submitted by Asia Pacific Trading Partners (investigation No. 332–374, USITC Publication 3053, August 1997); General Agreement on Trade in Services: Examination of South American Trading Partners' Schedules of Commitments (investigation No. 332–367, USITC Publication 3007, December 1996); and General Agreement on Trade in Services: Examination of Major Trading Partners' Schedules of Commitments (investigation No. 332–358, USITC Publication 2940, December 1995). These publications are available on the ITC Internet server (http://www.usitc.gov).

Public Hearing

A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC, beginning at 9:30 a.m. on June 2, 1999. All persons shall have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436, no later than 5:15 p.m., May 17, 1999. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., May 17, 1999. The deadline for filing post-hearing briefs or statements is 5:15 p.m., June 15, 1999. In the event that, as of the close of business on May 17, 1999, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary to the Commission (202–205–1816) after May 17, 1999, to determine whether the hearing will be held.

Written Submissions

In lieu of, or in addition to, participating in the hearing, interested parties are invited to submit written statements concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of section § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on 4 June 15, 1999. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

By order of the Commission.

Issued: November 10, 1998.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–30886 Filed 11–18–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921–127 (Review)]

Elemental Sulphur from Canada

AGENCY: United States International Trade Commission.

ACTION: Scheduling of an expedited five-year review concerning the antidumping duty order on elemental sulphur from Canada.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on elemental sulphur from Canada would be likely to lead to continuation or recurrence of material injury. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: November 5, 1998.

FOR FURTHER INFORMATION CONTACT: Jim McClure (202–205–3191), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION

Background

On November 5, 1998, the Commission determined that both domestic and respondent interested party responses to its notice of institution (63 F.R. 41280, August 3, 1998) of the subject five-year review were inadequate.[1] The Commission

[1] Chairman Bragg and Commissioner Koplan dissenting.

concluded that the domestic interested party group response was inadequate because the sole response by a domestic interested party, although individually adequate, accounted for a low share of domestic sulphur production, and therefore did not represent a sufficient willingness among domestic interested parties to participate in this review and an adequate indication that they will submit information requested throughout the proceeding. We note that recovered sulphur now accounts for most of domestic sulphur production, but that no recovered sulphur producers responded to the notice of institution. The Commission concluded that the respondent interested party group response was inadequate because the sole response by a respondent interested party, although individually adequate, accounted for a low share of subject imports and a low share of foreign production, and therefore did not represent a sufficient willingness among respondent interested parties to participate in this review and an adequate indication that they will submit information requested throughout the proceeding. The Commission did not find any other circumstances that would warrant conducting a full review. Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act. A record of the Commissioners' votes and the statement of Chairman Bragg are available from the Office of the Secretary and at the Commission's web site.

Staff Report

A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on December 3, 1998, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written Submissions

As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before December 8, 1998, and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by December 8, 1998. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16c and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination

The Commission has determined to extend the period of time for making its expedited determination in this review by up to 90 days pursuant to 19 U.S.C. § 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: November 13, 1998.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–30887 Filed 11–18–98; 8:45 am]

BILLING CODE 7020–02–P

[2] The Commission has found responses submitted by Freeport-McMoRan Sulphur Inc. and Husky Oil Ltd. to be adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–787 (Final)]

Extruded Rubber Thread From Indonesia

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of an antidumping investigation.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–787 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from Indonesia of extruded rubber thread, provided for in subheading 4007.00.00 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: November 3, 1998.

FOR FURTHER INFORMATION CONTACT: Jonathan Seiger (202–205–3183), Office of Investigations, U.S. International Trade Commission, 500 E Street S.W., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION

Background

The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of extruded rubber thread from Indonesia are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on March 31, 1998, by North American Rubber Thread Co., Ltd., Fall River, MA.

The petition also alleged that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Indonesia of extruded rubber thread that were being subsidized by the Government of Indonesia. The Commission made an affirmative preliminary injury determination with regard to those imports. Subsequently, however, Commerce made a negative preliminary determination concerning whether manufacturers, producers, or exporters

[1] For purposes of this investigation, Commerce has defined the subject merchandise as ''vulcanized rubber thread obtained by extrusion of stable or concentrated natural rubber latex of any cross sectional shape, measuring from 0.18 mm, which is 0.007 inches or 140 gauge, to 1.42 mm, which is 0.056 inch or 18 gauge, in diameter.''

of extruded rubber thread in Indonesia received subsidies. In the event Commerce makes an affirmative final determination regarding the issue of subsidies, the Commission will activate the final phase of its countervailing duty investigation on extruded rubber thread from Indonesia (inv. No. 701–TA–375). The briefing schedule, hearing, and other deadlines applicable to the final phase of inv. No. 731–TA–787, as outlined below, will also apply to inv. No. 701–TA–375.

Participation in the Investigation and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. § 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on March 12, 1999, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on March 25, 1999, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before March 16, 1999. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on March 18, 1999, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is March 19, 1999. Parties may also file written testimony in connection with 4 their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is March 31, 1999; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before March 31, 1999. On April 19, 1999, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before April 21, 1999, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: November 16, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–30978 Filed 11–18–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–386 and 731–TA–812–813 (Preliminary)]

Live Cattle from Canada and Mexico

AGENCY: United States International Trade Commission.

ACTION: Institution of countervailing duty and antidumping investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase countervailing duty investigation No. 701–TA–386 (Preliminary) and antidumping investigations Nos. 731–TA–812–813 (Preliminary) under sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1671b(a) and 19 U.S.C. § 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of live cattle that are alleged to be subsidized by the Government of Canada, and imports from Canada and Mexico of live cattle that are alleged to be sold in the United States at less than fair value.[1] Unless the

[1] The products covered by these investigations are live cattle and calves for slaughter and feeder cattle and calves. Excluded from the scope are imports of dairy cows for the production of milk for human

Continued

Department of Commerce extends the time for initiation pursuant to section 702(c)(1)(B) or 732(c)(1)(B) of the Act (19 U.S.C. § 1671a(c)(1)(B) or 19 U.S.C. § 1673a(c)(1)(B)), the Commission must reach preliminary determinations in these investigations in 45 days.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: November 12, 1998.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202–205–3200), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION

Background

These investigations are being instituted in response to a letter filed on November 12, 1998, by the Ranchers-Cattlemen Action Legal Foundation (''R-Calf'') (Columbus, MT), and its supporting trade associations and individual cattlemen and cattlewomen. Counsel for R-Calf withdrew its petitions and addenda in countervailing duty investigation No. 701–TA–385 (Preliminary) and antidumping investigations Nos. 731–TA–809–810 (Preliminary) on November 10, 1998. The letter received on November 12, 1998 petitioning for institution of antidumping and countervailing duty investigations requested that the petition and addenda filed in the discontinued investigations be incorporated by reference in the instant investigations. The instant antidumping and countervailing duty investigations also shall incorporate the record from the discontinued investigations.

consumption and purebred cattle specially imported for breeding purposes and other cattle specially imported for breeding purposes. The merchandise subject to these investigations is included in subheading 0102.90.40 of the Harmonized Tariff Schedule of the United States, with the exception of statistical reporting numbers 0102.90.4072 and 0102.90.4074.

Participation in the investigations and public service list

Persons (other than petitioners) wishing to participate in the investigations as parties must file new entries of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. (Persons who filed entries of appearance in countervailing duty investigation No. 701–TA–385 (Preliminary) and antidumping investigations Nos. 731–TA–809–810 (Preliminary) must file new entries of appearance.) Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in these investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. § 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the new application is made not later than seven days after the publication of this notice in the **Federal Register**. (Persons who filed APO applications in the discontinued investigations must file new applications.) A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on December 2, 1998, at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC. Parties wishing to participate in the conference should contact Elizabeth Haines (202–205–3200) not later than November 30, 1998, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before December 7, 1998, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: November 13, 1998.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–30888 Filed 11–18–98; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Amended Settlement Agreement in In Re Petoskey Manufacturing Co. Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that an Amended Settlement Agreement in *In re Petoskey Manufacturing Co.,* No. ST 90–81004 (W.D. Mich.), has been entered into by the United States on behalf of U.S. EPA and Petoskey Manufacturing Co., and was lodged with the United States District Court for the Western District of Michigan on November 10, 1998. Under the Amended Settlement

Agreement, the reorganized debtor will, *inter alia,* pay the United States $88,000 plus interest with respect to Petoskey Manufacturing Company Site in Petoskey, Michigan.

The Department of Justice will receive comments relating to the proposed Amended Settlement Agreement for 30 days following the publication of this Notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *In re Petoskey Manufacturing Co.,* D.J. Ref. No. 90–11–3–658A.

The proposed Amended Settlement Agreement may be examined at the Office of the United States Attorney for the Western Division of Michigan, 330 Ionia Ave. NW, Suite 501, Grand Rapids, MI 49503; the Region 5 Office of the United States Environmental Protection Agency, 77 W. Jackson Blvd., Chicago, IL 60604; and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005 (202–624–0892). A copy of the proposed Amended Settlement Agreement may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. In requesting a copy of the proposed Amended Settlement Agreement, please enclose a check in the amount of $4.25 (25 cents per page for reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–30980 Filed 11–18–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act and the Resource Conservation and Recovery Act

In accordance with Departmental policy, 28 CFR 50.7, and Section 122(d)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9622(d)(2), notice is hereby given that a proposed Consent Decree in *United States* v. *City of Portsmouth, et al.* and *State of New Hampshire* v. *City of Portsmouth, et al.,* consolidated as Civil Action No. 98–600–SD, was lodged with the United States District Court for the District of New Hampshire on October 30, 1998. The claims in this civil action relate to the Coakley Landfill Superfund Site in North Hampton and Greenland, New Hampshire.

The proposed Consent Decree resolves the United States' claims under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606, 9607, and Section 7003 of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6973, on behalf of the U.S. Environmental Protection Agency (''EPA''), against 28 municipal, corporate, and other defendants (the ''Settling Defendants'') for the performance of the Operable Unit Two management of migration remedial action at the Coakley Landfill Site and reimbursement towards costs incurred by EPA relating to Operable Unit Two. In addition, the Consent Decree resolves claims by the State of New Hampshire against the Settling Defendants relating to Operable Unit Two. The Consent Decree also provides for contribution by the United States on behalf of certain agencies of the United States (the ''Settling Federal Agencies'') towards the costs of performance of the Operable Unit Two work and Operable Unit Two EPA costs. Furthermore, the Consent Decree provides for contribution by three of the Settling Defendants towards the costs of performance of Coakley Landfill Operable Unit One source control work, which is being carried out by persons other than these three Settling Defendants pursuant to a previous consent decree, as well as for contribution to EPA oversight costs for such Operable Unit One work.

The twenty eight Settling Defendants are the City of Portsmouth, Town of North Hampton, Town of Newington, 1101 Islington Street, Inc., Automotive Supply Associates, Inc., BFI Waste Systems of North America, Inc., Booth Fisheries Corporation, Bournival, Inc., Customs Pools, Inc., Erie Scientific, Gary W. Blake, Inc., Great Bay Marine, Inc., GTE Operations Support Incorporated, K.J. Quinn & Co., Inc., Kmart Corporation, Mobil Oil Corporation, New England Telephone & Telegraph Company, Newington Midas Muffler, Northern Utilities, Inc., PMC Liquidation Inc., Public Service Company of New Hampshire, S&H Precision Manufacturing Co., Inc., Saef Lincoln-Mercury, Inc., Seacoast Volkswagen, Inc., Simplex Technologies, Inc., United Technologies Corporation, Waste Management of Maine, Inc., and Waste Management of New Hampshire, Inc. These defendants include former operators of the Coakley Landfill and generators and transporters of wastes taken to the Coakley Landfill.

Under the terms of the Consent Decree, the Hazardous Substances Superfund will receive $999,000 from the 28 Settling Defendants as a group towards EPA Operable Unit Two past costs and $251,000 from the United States on behalf of the Settling Federal Agencies towards EPA Operable Unit Two past costs. The Settling Defendants will also perform the Remedial Design and Remedial Action (''RD/RA'') for Operable Unit Two as selected in EPA's Record of Decision dated September 30, 1994. In addition, the Settling Defendants will reimburse the EPA Hazardous Substances Superfund up to $60,000 in oversight costs relating to Operable Unit Two and, in the event that the United States or the State incurs future response costs other than oversight costs relating to Operable Unit Two, will reimburse the United States and the State for such future response costs. The United States, on behalf of the Settling Federal Agencies, will reimburse the Settling Defendants for 20.08% of the costs of Operable Unit Two work performed by the Settling Defendants, as well as 20.08% of oversight and future response costs paid by the Settling Defendants.

In addition, the Hazardous Substances Superfund will receive $18,706.22 from Great Bay Marine, Inc.; $16,250.00 from 1001 Islington Street, Inc.; and $18,706.22 from Bournival, Inc., three of the Settling Defendants, towards EPA Operable Unit One oversight costs. Also, Great Bay Marine, Inc. will pay $56,118.66; 1001 Islington Street, Inc. will pay $48,750.00; and Bournival, Inc. will pay $56,118.66, over time with interest, to the Coakley Landfill Trust, a trust account set up to pay for the Operable Unit One work being performed by other parties pursuant to the previous Coakley Operable Unit One decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. In addition, because the Consent Decree includes covenants not to sue the Settling Defendants under Section 7003 of RCRA, 42 U.S.C. 6973, the United States will provide an opportunity for a public meeting in the affected area, if requested within the thirty (30) day public comment period. *See* 42 U.S.C. § 6973(d). Any comments and/or requests for a public meeting should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of Portsmouth, et al.,* Civil Action No. 98–600–SD, D.J. Ref. 90–11–2–678B.

The proposed Consent Decree may be examined at the Office of the United States Attorney, District of New Hampshire, 55 Pleasant Street, Concord, New Hampshire 03301, at the Region I office of the Environmental Protection Agency, One Congress St., Boston, Massachusetts 02203, and at the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $62.25, payable to the Consent Decree Library for the 25 cent per page reproduction cost.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 98–30970 Filed 11–18–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Amended Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act

Notice is hereby given that on October 30, 1998, the United States lodged a proposed amended consent decree, with the United States District Court for the Northern District of Illinois, in *United States, et al.* v. *the City of Rockford, Illinois,* Civil No. 98 C 50026, under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9601 *et seq.* The Amended Consent Decree resolves certain claims of the United States and the State of Illinois against the City of Rockford, Illinois, under Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. 9606(a) and 9607(a) at the Southeast Rockford Groundwater Contamination (''Site'') located in Rockford, Winnebago County, Illinois. Under the proposed Amended Consent Decree, the City of Rockford reaffirms the term and provisions of the original Consent Decree entered by the Court on or about April 9, 1998 (to perform the remedial action selected by U.S. EPA in its September 30, 1995, Record of Decision), and the Plaintiffs will be paid approximately $14.7 million. The Amended Consent Decree resolves claims of Plaintiffs against the City of Rockford, as set forth in the Amended Consent Decree, and resolves potential claims the Plaintiffs may have against the Covenant Beneficiaries, as set forth in the Amended Consent Decree. The City of Rockford and Covenant Beneficiaries will receive the covenants not to sue and contribution protection specified in the Amended Consent Decree. The Department of Justice also provides Notice that under section 7003(d) of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6973(d), the public may request an opportunity for a public meeting at which time they may offer comment.

The Department of Justice will receive comments relating to the proposed Consent Decree for 30 days following publication of this Notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044–7611, and should refer to *United States, et al.* v. *The City of Rockford, Illinois,* (Civil No. 98 C 50026, N.D. Ill.), D.J. Ref. No. 90–11–3–945. The proposed Consent Decree may be examined at the Office of the United States Attorney for the Northern District of Illinois, Western Division, Rockford, Illinois; the Region V Office of the United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, DC 20005, telephone No. (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check for reproduction costs (at 25 cents per page) in the amount of $13.75 for the Decree, payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–30969 Filed 11–18–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 96–4]

Cuong Trong Tran, M.D.; Denial of Application

On October 13, 1995, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Cuong Trong Tran, M.D. (Respondent), of Alexandria, Virginia, notifying him of an opportunity to show cause as to why DEA should not deny his application for registration as a practitioner under 21 U.S.C. 823(f), for reason that such registration would be inconsistent with the public interest.

By letter dated November 13, 1995, Respondent filed a request for a hearing, and following prehearing procedures, a hearing was held in Arlington, Virginia on June 3, 4 and 17, 1996, before Administrative Law Judge Mary Ellen Bittner. At the hearing both parties called witnesses to testify and introduced documentary evidence. After the hearing, the Government submitted proposed findings of fact, conclusions of law and argument, and Respondent filed a letter in reply to the Government's submission. On January 13, 1998, Judge Bittner issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision, recommending that Respondent's application for a DEA Certificate of Registration should be denied. On April 24, 1998, Respondent filed exceptions to Judge Bittner's Opinion and Recommended Ruling, and subsequently, Government counsel filed a response to Respondent's exceptions. Thereafter, on May 14 and 21, 1998, Judge Bittner transmitted the record of these proceedings to the Acting Deputy Administrator.

The Acting Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Acting Deputy Administrator adopts, in full, the Opinion and Recommended Ruling of the Administrative Law Judge. His adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Acting Deputy Administrator finds that Respondent graduated from medical school in 1965. He has been practicing as a general practitioner in Alexandria, Virginia since 1974. In 1979, a state inspector advised Respondent that a number of his patients were known drug abusers; that it appeared that the patients were seeing Respondent only to obtain drugs; and that Respondent should be more careful in prescribing to his patients. According to the inspector, Respondent indicated that he would be more careful.

Sometime prior to December 1990, DEA and a local police department received reports from local pharmacies and from the Virginia Board of Medicine that Respondent was excessively prescribing controlled substances over extended periods of time. As a result of

this information, investigators conducted a survey of 35 area pharmacies and determined that approximately 30 individuals were receiving a large number of controlled substance prescriptions from Respondent.

Between December 19, 1990 and February 21, 1991, two undercover officers and a cooperating individual went to Respondent's office in an attempt to obtain controlled substance prescriptions for no legitimate medical purpose. The cooperating individual went to Respondent's office on December 19, 1990 and January 10 and 16, 1991, wearing a concealed body wire which was monitored. During these visits, the cooperating individual had visible needle marks on his hands and arms from intravenous heroin use. At the first visit, the cooperating individual told Respondent that he had knee surgery in the past and that he had been taking pain killers for a long time. He indicated to Respondent that he needed to see him once a month, and asked for a specific controlled substance. After further conversation, Respondent asked ''Where is the pain now?'' and the cooperating individual reminded Respondent that it was an old knee injury and it was better. However, Respondent later asked whether the cooperating individual had knee pain and the individual answered, ''Yes.'' Respondent issued the cooperating individual a prescription for Vicodin following a very cursory examination.

During the second visit, the individual indicated that he had run out of his medicine and referred to ''that old knee injury from '85.'' Respondent told the cooperating individual that Vicodin ''is addicting,'' to which the individual responded, ''I know it's addicting, I've been taking it for five years and it's hard to get through without it, you know.'' Respondent nonetheless issued the individual a prescription for Vicodin. During the final visit, Respondent warned the individual of the addictive properties of Vicodin and advised him to take as little of the drug as possible and only when needed. Respondent did not examine the individual's knee.

An undercover police officer went to Respondent's office on eight occasions between December 19, 1990 and February 21, 1991. At first, the undercover officer indicated that he liked to feel a ''little mellowed out.'' Respondent asked if the officer was nervous, to which he replied, ''okay.'' The officer received a prescription for Valium. While Respondent's patient chart for the officer indicates that a physical examination was performed, the officer testified that there was no examination. During the second visit on December 27, 1990, Respondent asked if the undercover officer was nervous. The officer said, ''Yeah * * * that Valium just didn't make me feel any better. * * *'' Respondent refused the undercover officer's request for Percodan, but gave him a prescription for Xanax instead. According to the officer, Respondent listened to his breathing, but did not perform any other physical examination. At the next visit, the undercover officer indicated that he was not nervous, but that he wanted something stronger than Xanax. Respondent issued him a prescription for Ativan. For the next two visits, the undercover officer did not discuss any health problems whatsoever with Respondent and just asked for a prescription. Respondent warned the officer of the addictive nature of the prescribed drugs, but nonetheless issued prescriptions for Ativan. On the sixth visit, Respondent asked the officer if he felt ''like [you're] a little nervous and everything,'' to which the officer responded, ''yeah.'' Respondent gave the officer a prescription for Ativan. Finally, on the last two visits, the undercover officer indicated that he was feeling good. On one occasion, Respondent stated that the officer had come back too soon for another prescription. Respondent issued the officer Ativan prescriptions on both occasions.

A second undercover officer went to Respondent's office on four occasions between January 23 and February 21, 1991. During the first visit, the officer repeatedly asked for a prescription for Percodan. He offered to pay Respondent $100.00 instead of the $35.00 office visit charge. The officer told Respondent that he had obtained Percodan from another physician who told him that he had to have severe pain, but ''between you and me I really don't have severe pain. * * *'' He also told Respondent that he had sold Percodan in the past. Respondent asked the undercover officer if he had back pain, and the officer replied, ''I guess if I have to, I'll have back pain.'' After further conversation, Respondent said ''if you have pain come in here. I don't want to see you if you don't have pain.'' Respondent gave the officer a prescription for 30 Vicodin, telling him to take it only for pain. At the second visit, the undercover officer asked for Percocet and repeatedly said that he was not in any pain. Respondent issued the officer a prescription for 30 Vicodin, but told him not to take it if he was not in pain. During the next visit, the undercover officer indicated that he had run out of medicine. Respondent stated that the officer was back too soon for another prescription and should only take the drugs if he was in pain. The officer than stated, ''So, if I don't have any pain, I don't get any, right?'' The officer then stated that he had pain and asked Respondent to check his back. Respondent gave the officer a prescription for 20 Vicodin. On Respondent's final visit, Respondent again stated that the officer had returned too soon and repeatedly told the officer that he should only take the pills when he had pain and that they were addictive. The undercover officer said that, ''if I have to come back, I'll make sure I have pain.'' Respondent issued the officer a prescription for 20 Vicodin.

After the pharmacy surveys and the undercover visits, search warrants were executed at Respondent's office in October 1991 and April 1992, during which various patient records were seized. Subsequently, a number of Respondent's patients were interviewed.

In her Opinion and Recommendation Ruling, Findings of Fact, Conclusions of Law and Decision, Judge Bittner went into great detail regarding the prescriptions discovered during the pharmacy surveys, the information contained in the patient charts, what was learned during the patient interviews and the testimony of some of these individuals in subsequent criminal trials. Since the Acting Deputy Administrator is adopting Judge Bittner's findings of fact in their entirety, there is no need for him to reiterate them. However, the Acting Deputy Administrator makes the following general findings regarding Respondent's prescribing to the individuals at issue.

In general, the individuals complained of headaches, backaches, pain in various other parts of the body, nervousness and anxiety. They usually saw Respondent two to five times a month for several years. At virtually every visit, they were prescribed controlled substances with little or no other treatment. Respondent performed little or no physical examinations and there were very few, if any, referrals to specialists. There was no apparent attempt by Respondent to determine the cause of the alleged problems. A number of the individuals were admitted drug abusers and exhibited some of the classic signs of drug abuse. Most of the individuals were required by Respondent to sign documents which essentially stated that they had been advised of the habit forming nature of the prescribed controlled substances; that they have tried other medications in the past, but the prescribed

controlled substances are the only medications that help; and that they assume all responsibility for the misuse of the medication prescribed by Respondent. Respondent told some of the individuals to avoid taking the prescriptions to certain pharmacies, particularly ones with computers; to take the prescriptions to various pharmacies; or to take the prescriptions to Maryland or Washington, D.C. to be filled.

One patient indicated that Respondent had a reputation in the community as a physician from whom it was easy to obtain drugs. A pharmacist called Respondent and told him that Respondent was issuing controlled substance prescriptions to an individual who was also getting such prescriptions from other physicians. Respondent told the pharmacist to go ahead and fill the presented prescription. Respondent refused to issue an individual another controlled substance prescription, indicating that some of his other patients had gotten him in trouble with DEA, and he stopped prescribing to another individual, telling her that he was having some troubles.

A pharmacist sent letters to Respondent regarding two patients asking Respondent for a diagnosis for the prescriptions issued since they were receiving a large number of prescriptions from Respondent. An insurance company wrote to Respondent regarding one of his patients seeking a diagnosis in light of an overabundance of prescriptions. There is no indication that Respondent replied to any of these letters.

One patient told Respondent that he had abused drugs in the past. Respondent routinely issued him controlled substance prescriptions for an alleged back problem. At some point, Respondent indicated that he could no longer issue the individual prescriptions for his back problem and the individual would have to have some other problem. The individual said that a tooth was bothering him when in fact he did not have a toothache. Respondent issued the individual controlled substance prescriptions regularly for five months for his alleged toothache. Thereafter, the patient chart indicates that Respondent prescribed the individual controlled substances supposedly for knee pain following surgery even though the individual was being treated by an orthopedist and he did not have any pain after the first week following surgery.

Experts for both the Government and Respondent reviewed Respondent's controlled substance prescribing. The Government experts essentially concluded that there was no legitimate medical purpose for Respondent's continued prescribing of controlled substances to the individuals at issue, or at the very least it was not good medicine. One expert found Respondent's prescribing to be clear abuse, gross misuse of addicting substances, inappropriate and indiscriminate. The other expert stated that with no tests to determine the cause, ''the continued use of narcotics for headaches is reprehensible.'' He further testified that,

> I am not saying he is a bad doctor. I'm simply saying that he was duped many times over, and I think that's the reprehensible problem. He needed to think more clearly about why he was giving narcotics. There was one person here who had 500 prescriptions for a narcotic. I mean, * * * that's just never going to happen in real life with primary care physicians. It's just not going to happen. And yet it happened in his case, and it happened many times over * * *.

This expert also testified that when treating individuals with severe prolonged pain, he generally maintains them on narcotics for no more than one to two weeks and invariably refers them to a specialist if the narcotics are not successful. This expert further testified that while it is appropriate to warn patients of the addictive potential of controlled substances, he had never seen in his 35 years of practice a consent for, or a waiver for narcotics like the one that was used by Respondent.

Respondent's experts essentially felt that Respondent's prescribing was appropriate. However, neither of Respondent's experts were family practitioners. One of the experts felt that Respondent's patients described the normal signs of people suffering from migraine headaches and that prescribing of controlled substances is common for an acute migraine. But according to the expert, long-term use of controlled substances causes addiction which results in a vicious cycle because abrupt cessation of the medication will cause the patient to develop a headache. The expert testified that in such a situation, the patient needs to be hospitalized to manage the withdrawal from the controlled substances. Respondent's other expert indicated that if a patient with chronic pain made four or five visits to him and the pain was only alleviated by a narcotic, he would refer the patient to a specialist.

In 1992, Respondent was indicted in the United States District Court for the Eastern District of Virginia on 136 counts of prescribing controlled substances outside the usual curse of medical practice and for other than legitimate medical purposes in violation of 21 U.S.C. 841(a)(1). Following a jury trial, Respondent was found guilty of 127 counts of unlawful distribution of controlled substances.

As a result of his conviction, on April 26, 1993, the Virginia Board of Medicine (Medical Board) revoked Respondent's license to practice medicine in Virginia. Thereafter, DEA revoked Respondent's previous DEA Certificate of Registration by order published on July 12, 1993. See 58 Fed Reg. 37,506 (1993).

On February 28, 1994, the United States Court of Appeals for the Fourth Circuit reversed Respondent's conviction on 80 counts based upon insufficient evidence to convict, and reversed and remanded for a new trial the convictions on 47 counts because reputation evidence and a medical expert's hearsay opinion were improperly admitted into evidence. Subsequently Respondent was charged in a superseding indictment with 45 counts of unlawful distribution of controlled substances in violation of 21 U.S.C. 841(a)(1). Respondent was tried on these counts in July 1994 and was acquitted on all charges. Following his acquittal, the Medical Board issued an order on August 15, 1994, vacating its earlier revocation of Respondent's medical license.

At the hearing in this matter, Respondent testified that he is ''a changed man,'' and that he is now aware and more careful about giving narcotics to patients. However, he did not acknowledge that he had in any way improperly prescribed controlled substances. Respondent admitted that he told patients to go to different pharmacies, but said that he did so to encourage his patients to find the best price for their prescriptions. He denied that he ever told his patients to avoid having their prescriptions filled at pharmacies with computers or to spread their prescriptions among various pharmacies. Respondent further testified that pain is subjective, that he gives the patient the benefit of the doubt, and that ''[m]y conscience say I have to trust people and now, after I go through that, I know you have to be careful not to trust people so much. * * *''

Respondent also testified that if he is issued a DEA registration, ''I swear that I will not give controlled substances anymore, because this does not do any good to me.'' He stated that he needs a DEA registration in order to obtain hospital privileges, to be accepted by insurance companies as a provider, and to have his prescriptions for non-

controlled substances filled at pharmacies.

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any application for such registration, if he determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered:

(1) The recommendation of the appropriate state licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under federal or state laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable state, federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the pubic heath or safety. These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See Henry J. Schwarz, Jr., M.D., 54 Fed. Reg. 16,422 (1989).

Regarding factor one, it is undisputed that the Medical Board revoked Respondent's medical license following his conviction, but then reinstated it after his acquittal on all charges. Therefore, Respondent currently possesses an unrestricted state license to practice medicine and handle controlled substances. But, the Acting Deputy Administrator agrees with Judge Bittner that ''inasmuch as state licensure is a necessary but not sufficient condition for DEA registration, * * * this factor is not dispositive.''

As to factors two and four, Respondent's experience in dispensing controlled substances and his compliance with applicable laws relating to controlled substances, the Acting Deputy Administrator agrees with Judge Bittner that ''[t]he record is replete with examples of Respondent's prescribing of controlled substances in a manner which is most charitably described as totally irresponsible.'' Pursuant to 21 CFR 1306.04, controlled substances may only be prescribed for legitimate medical purpose. There are many instances that suggest that Respondent was indiscriminately prescribing controlled substances. Respondent prescribed controlled substances to individuals on a regular basis over an extended period of time based solely on the subjective complaints of the individuals with little or no effort to determine the cause of the individual's problems or to refer them to specialists. Judge Bittner found the Government's expert who testified at the hearing to be ''a knowledgeable, credible expert who thoroughly considered the information available to him.'' The expert found that there was no legitimate medical reason for Respondent's continued prescribing of controlled substances to almost all of the individuals.

The undercover visits raise serious concerns regarding Respondent's dispensing of controlled substances. One undercover officer repeatedly requested Percodan by name, told Respondent that he sold Percodan, and offered to pay Respondent $100.00 rather than the standard $35.00 office visit charge. In response to Respondent's question about whether he had any pain, the undercover officer stated that, ''I guess if I have to, I'll have back pain.'' While Respondent refused to prescribe the undercover officer Percodan he did issue him prescriptions for Vicodin. The other undercover officer's patient chart indicates that Respondent performed a physical examination on the initial visit before issuing the officer a controlled substance prescription. However, the officer testified that Respondent did not perform any sort of an examination. As to the cooperating individual, Respondent issued him prescriptions for a narcotic even though the individual had visible needle marks on his hands and arms.

There are other indications in the record that Respondent himself was not completely comfortable with his prescribing of controlled substances to the individuals at issue. First, Respondent had his patients sign documents wherein the patients indicated that they would ''take all the responsibility of the misuse of the medicine prescribed for my health by Tran-Cuong MD.'' As a DEA registrant, a physician must ensure that the controlled substances that he/she prescribes are only used for a legitimate medical purpose. These waivers are an attempt by Respondent to abrogate this responsibility. Second, according to a number of the individuals, Respondent told them to take their prescriptions to various pharmacies, to avoid pharmacies with computers and to take them to be filled at pharmacies in Maryland and Washington, D.C. Respondent contends that he never told the individuals to take their prescriptions to different pharmacies or to avoid pharmacies with computers, but that he only encouraged the individuals to find the best price for their medication. Since a number of the individuals related the same information, the Acting Deputy Administrator does not find Respondent's explanation credible. Finally, Respondent stopped prescribing controlled substances to at least two of the individuals stating that he was having trouble with DEA. This seems to suggest that Respondent himself doubted the legitimacy of the prescriptions that he had been issuing to these individuals.

The Acting Deputy Administrator concurs with Judge Bittner's finding ''that Respondent prescribed controlled substances to numerous patients, over long periods of time, in contravention of his responsibility to establish that there was a medical need for these prescriptions.''

Regarding factor three, while Respondent was initially convicted of 127 counts of unlawful distribution, these charges were ultimately disposed of by reversal, dismissal or acquittal. Therefore, there is no evidence that Respondent has been convicted of any charges relating to controlled substances.

As to factor five, Judge Bittner stated that ''Respondent's continuing attempts to justify his prescribing practices warrant the inferences * * * that although Respondent clearly regrets the legal financial and personal difficulties that arose from his prescribing practices, he still does not fully acknowledge his wrongdoing.* * *''

Judge Bittner concluded that ''Respondent is unwilling and/or unable to accept the responsibilities inherent in holding a DEA registration.'' Therefore, Judge Bittner found that Respondent's registration would be inconsistent with the public interest and recommended that his application be denied.

Respondent filed exceptions to Judge Bittner's recommendation stating that denial is too harsh a penalty since this is his first offense and he ''was acquitted of criminal charges which were based on the same factual situation presented here.'' The Acting Deputy Administrator notes that these proceedings are not punitive in nature, but instead look to protect the public health and safety. See Richard J. Lanham, M.D., 57 Fed. Reg. 40,475 (1992); Richard A. Cole, M.D., 57 Fed. Reg. 8677 (1992). In evaluating this case, the Acting Deputy Administrator finds it noteworthy that Respondent was warned in 1979 that he was being conned by known drug abusers to issue them controlled substance prescriptions. Respondent

acknowledged this information, yet failed to exercise proper care in his future prescribing. In addition, while it is true that Respondent was acquitted of all criminal charges, a conviction is not a necessary prerequisite for denial. Careless or negligent handling of controlled substances creates the opportunity for diversion and could justify revocation or denial. As Respondent's counsel noted in his closing argument at Respondent's second criminal trial:

> * * * because if Dr. Tran didn't notice what he should have noticed, that is not a crime. That may be bad doctoring. That may be carelessness. That may be a reason perhaps why someone shouldn't be a doctor * * *.''

The Acting Deputy Administrator concludes that Respondent's careless and indiscriminate prescribing of controlled substances warrant the denial of his application for registration.

Also in his exceptions, Respondent contends that ''this procedure has been a learning experience. I now realize the importance of maintaining detailed medical records on each patient * * * [and] I am a more enlightened man when it comes to prescribing controlled substances for a legitimate medical purpose *only*.'' Respondent says that he will only prescribe for a legitimate medical purpose and that he is a ''changed man,'' but he does not acknowledge that he prescribed improperly. Therefore, the Acting Deputy Administrator is not confident that Respondent recognizes what needs changing in his handling of controlled substances. There is no evidence in the record how Respondent has changed or that he has attempted to better educate himself in the proper handling of controlled substances. As a result, the Acting Deputy Administrator does not believe that it is in the public interest for Respondent to be issued a registration at this time.

Finally, in his exceptions and during the hearing in this matter, Respondent indicated that if he is issued a DEA registration, he will refrain from dispensing controlled substances ''because it not only get me in trouble, it doesn't do anything to me.'' According to Respondent without a DEA registration he cannot get hospital privileges, he is not accepted as a provider by insurance companies, pharmacies will not fill his non-controlled prescriptions, and pharmaceutical representatives refuse to give him samples of non-controlled substances. While Respondent's predicament is unfortunate, it does not justify granting him a DEA registration. Practitioners are issued DEA registrations so that they can responsibly handle controlled substances, not so that they can obtain hospital privileges. In light of Respondent's failure to acknowledge any wrongdoing, the lack of any details as to how he has changed, and the absence of any recent training in the proper handling of controlled substances, the Acting Deputy Administrator concludes that it would be inconsistent with the public interest to grant Respondent's application for a DEA Certificate of Registration at this time.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for registration, executed by Cuong Trong Tran, M.D., be, and it hereby is, denied. This order is effective December 21, 1998.

Dated: November 13, 1998.

Donnie R. Marshall,

Acting Deputy Administrator.

[FR Doc. 98–30884 Filed 11–18–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1889–97]

Imposition of Fines Under Section 231 of the Immigration and Nationality Act

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice serves to clarify the Immigration and Naturalization Service (Service) policy involving the imposition of fines under section 231 of the Immigration and Nationality Act (Act). The Service will, in the future publicize criteria and implement procedures that will impose fines for violations of section 231(a) and (b), of the Act, in a more comprehensive manner. However, fines will not be imposed until the Service has notified the carriers of procedures and criteria that will be used in this process.

DATES: This notice is effective November 19, 1998.

FOR FURTHER INFORMATION CONTACT: Una Brien, National Fines Office, Immigration and Naturalization Service, 1400 Wilson Blvd., Suite 210, Washington, DC 22209, telephone (202) 305–7018.

SUPPLEMENTARY INFORMATION: This notice announces the Service's plans to adopt new procedures to impose fine liability under section 231(a) and (b) of the act. Specifically the Service intends to begin to fine carriers for violations in accordance with procedures in section 231(a) and expand fine liability under 231(b) of the Act in accordance with procedures and criteria that are being developed. The Service will inform carriers of the procedures and criteria under which such fines may be levied via further publication in the **Federal Register**. These fines will not be imposed until the Service has informed the interested parties through publication in the **Federal Register** of the procedures and criteria. When these procedures and criteria are published as a notice of proposed rulemaking, carriers and others will have an opportunity for comment.

The collection of arrival and departure information for airport and seaport activity is addressed in section 231 of the Act and expanded upon in 8 CFR part 231. This section delineates the transportation company's responsibility to provide manifests for arriving and departing passengers.

Presently, the Service only imposes fines for violations of section 231(b) of the act, with respect to the proper submission of departure manifests, Form I–94T. The Service plans to expand the imposition of section 231(a) and (b) fines for failure to present properly completed arrival and departure manifests, as required on Form I–94, Arrival-Departure Record; Form I–94T, Arrival-Departure Record (Transit Without Visa); and Form I–94W, Visa Waiver Nonimmigrant Arrival/Departure Document.

Section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) Pub. L. 104–208, 110 Stat. 3009 (Sept. 30, 1996) requires the Service to develop an automated entry and exit control system that will collect a record of departure for every alien departing the United States and match these records of departure with the record of the alien's arrival in the United States. This will enable the Attorney General to identify, through on-line searching procedures, lawfully admitted nonimmigrants who remain in the United States beyond the authorized period of stay. Forms I–94 are used to record the arrival and departure of nonimmigrant aliens into and from the United States. Imposing fines under section 231 of the Act will encourage air and sea carriers to comply with regulations concerning the proper submission of Form I–94, I–94T, and I–94W.

The Service has defined the Form I–94 as the document which meets the manifest requirements. 8 CFR 231.1(a) The Form I–94 information is maintained in the Nonimmigrant Information System (NIIS). The reliability and timeliness of the information contained within NIIS has been a matter of concern and has been questioned by the General Accounting Office, the Department of Justice, Office of the Inspector General (OIG), and internally by the Service. At present, the Service is reviewing NIIS to identify problems and develop solutions for its deficiencies. In a recent OIG inspection report on overstays (Report Number I–97–08) the OIG stated that the Service needs to improve its departure data, particularly the collection of departure Forms I–94. ''Given the long-standing failure to receive all departure records, INS should take immediate action to improve collection of these forms. * * *''

Implementing a more comprehensive program to impose section 231 fines will be part of a multi-pronged approach (which includes training carriers and Service personnel on proper I–94 processing procedures and monitoring compliance) to improve data collection as required by Congress and the OIG.

Dated: November 10, 1998.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 98–30951 Filed 11–18–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Request Revision of a Currently Approved Collection

ACTION: Notice of Information Collection; Revision of a Currently Approved Collection; Arrestee Drug Abuse Monitoring (ADAM, formerly Drug Use Forecasting) Program.

The Department of Justice, Office of Justice Programs, has submitted the information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until January 19, 1999.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency; including whether the information will have any practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Arrestee Drug Abuse Monitoring (ADAM, formerly Drug Use Forecasting) Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No agency form number. Office of Research and Evaluation, National Institute of Justice, Office of Justice Programs.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* Misdemeanor and felony arrestees in city and county jails and juvenile detention facilities. The ADAM program monitors the extent and types of drug use among arrestees. Currently the program operates in 35 cities. An additional 15 sites are proposed for establishment by the end of 1999, to bring the total to 50 cities, and 25 additional cities by the end of the year 2000, which will bring the total number of cities to 75. Data are collected in each city every three months from a new sample of arrestees. Participation is voluntary and anonymous and data collected include a personal interview and urine specimen.

In the next 6 months, OJP proposes to introduce new features to the program, the primary being.

—A redesigned data collection instrument

—A sample selection process to replace the current process

Implementation of these features will require special field testing in the current ADAM sites.

(5) *An estimate of the total number of respondents and amount of time estimated for an average respondent to respond:* Following is the maximum number of responses expected for the main ADAM questionnaire in Fiscal Year 1999 and 2000. The estimate assumes that 50 sites are in operation all quarters of FY 1999 and 75 sites are in operation all quarters of FY 2000. In FY 1999, 50000 adult male arrestees, 20000 adult female arrestees, 20000 juvenile male arrestees, and 10000 juvenile female arrestees will be interviewed (total = 100,000 at 20 minutes a response). In FY 2000, 75000 adult male arrestees, 30000 adult female arrestees, 30000 juvenile male arrestees, and 15000 juvenile female arrestees will be interviewed (total = 150,000 at 20 minutes a response). Additionally, addendum questionnaires will be administered to the same respondents at some number of sites for some number of quarters over the year. The estimate provided here is the maximum number of responses that will be obtained: it is assumed that all sites will field an addendum questionnaire in 3 out of the 4 quarters of the year. In FY 1999, the number of addendum questionnaires administered across all respondent types will be 300,000 at 10 minutes per response; and in FY 2000 the number of addendum questionnaires administered will be 450,000 at 10 minutes a response.

(6) An estimate of the total public burden (in hours) associated with the collection: 83,000 hours in FY 1999 and 125,000 hours in FY 2000.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Dr. K. Jack Riley 202–616–9030, Director, Arrestee Drug Abuse Monitoring (ADAM) Program, National Institute of Justice, room 7344, 810 7th Street NW, Washington, DC 20531. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Dr. K. Jack Riley.

If additional information is required, contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: November 13, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–30882 Filed 11–18–98; 8:45 am]

BILLING CODE 4410–18–M

NATIONAL LABOR RELATIONS BOARD

Privacy Act of 1974; Publication of Revised and Deleted Systems of Records Notice

AGENCY: National Labor Relations Board (NLRB).

ACTION: Amendments to systems of records for Payroll/Personnel Records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, the National Labor Relations Board (NLRB) publishes this notice of its intention to establish a system of records to be entitled ''NLRB–10, Payroll/Personnel Records,'' by combining three existing systems of records, NLRB–10, Pay Records—Retirement; NLRB–11, Payroll-Finance Records; and NLRB–13, Time and Attendance Records. This change is accomplished by modifying one entry and deleting two others, deleting two routine uses, dividing one routine use into two distinct uses for purposes of clarify, amending the language of four routine uses, adding two new routine uses, and updating the addresses of system locations; updating the citations referring to 29 CFR 102.117; as well as making several insignificant administrative language revisions.

All persons are advised that in the absence of submitted comments, views, or arguments considered by the NLRB as warranting modification of the notice as herewith to be published, it is the intention of the NLRB that the notice shall be effective upon expiration of the comment period without further action by this Agency.

DATES: The amended system of records notice will become effective without further notice 30 days from the date of this publication (December 21, 1998) unless comments are received on or before that date which result in a contrary determination.

ADDRESSES: All persons who desire to submit written comments, views, or arguments for consideration by the NLRB in connection with the proposed new system of records shall file them with the Executive Secretary, National Labor Relations Board, Room 11600, 1099 14th Street, NW, Washington, DC 20570–0001.

Copies of all such communications will be available for examination by interested persons during normal business hours in the Office of the Executive Secretary, National Labor Relations Board, Room 11600, 1099 14th Street, NW, Washington, DC 20570–0001.

FOR FURTHER INFORMATION CONTACT: John J. Toner, Executive Secretary, National Labor Relations Board, Room 11600, 1099 14th Street, NW, Washington, DC 20570–0001.

SUPPLEMENTARY INFORMATION: 1. The following changes have been made to the proposed new system of records entitled, NLRB–10, Payroll/Personnel Records, by combining three existing systems: ''NLRB–10, Pay Records Retirements''; ''NLRB–11, Payroll-Finance Records''; and ''NLRB–13, Time and Attendance Records''; and by deleting old routine uses Nos. 1 and 2 because the specified ''need to know'' in them is authorized by 5 U.S.C. 552a(b)(5).

2. Routine use No. 2 is new and is added to reflect the changes resulting from the installation of an electronic personnel/payroll system upgrading the earlier payroll, personnel, and time and attendance systems. The NLRB utilizes the Department of Agriculture, National Finance Center (NFC), and NFC's electronic Payroll/Personnel Processing System, PC–TARE, to prepare and electronically transmit data to NFC.

3. The language of routine use No. 8 has been amended to specify that on disclosure to an inquiring congressional office, the subject individual must be a constituent about whom the records are maintained.

4. Routine use No. 9 has been divided into two distinct uses Nos. 9 and 10 for purposes of clarity, one dealing solely with arbitrators, and the other with officials of labor organizations. The language has been amended to conform to the intent of routine use (e) in the Government-wide system of records OPM/GOVT–2, Employee Performance File System Records, to eliminate the NLRB requirement that the information that may be disclosed to a labor organization ''shall be furnished in depersonalized form, i.e., without personal identifiers.'' Routine use (e) is a Government-wide system of records OPM/GOVT–2 which provides that the information will be ''disclosed to an arbitrator to resolve disputes under a negotiated grievance procedure or to officials of labor organizations under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation.'' The NLRB is deleting the requirement that ''[W]henever feasible and consistent with responsibilities under the Act, such information shall be furnished in depersonalized form, i.e., without personal identifiers,'' a requirement not contained in OPM/GOVT–2 routine use (e).

5. Routine use No. 11 has been amended by changing reference from ''Agency'' to ''NLRB'' for more specificity.

6. Routine use No. 12 is amended to specify more exactly the information that may be disclosed to a court or an adjudicative body in the course of presenting evidence or argument including disclosure to opposing counsel of witnesses in the course of civil discovery.

7. Routine use No. 14 is new and has been added pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PL 104–193), NLRB will disclose data from its Payroll/Personnel Records system of records to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for use in the National Database of New Hires, part of the Federal Parent Locator Service (FPLS), and Federal Tax Offset System, DHHS/OCSE No. 09–90–0074.

FPLS is a computerized network through which States may request location information from Federal and state agencies to find noncustodial parents and their employers for purposes of establishing paternity and securing support. On October 1, 1997, the FPLS was expanded to include the National Directory of New Hires, a database containing employment information on employees recently hired, quarterly wage data on private and public sector employees, and information on unemployment compensation benefits. On October 1, 1998, the FPLS will be expanded further to include a Federal Case Register. The Federal Case Register will contain abstracts on all participants involved in child support enforcement cases. When the Federal Case Registry is instituted, its files will be matched on an ongoing basis against the files in the National Directory of New Hires to determine if an employee is a participant in a child support case anywhere in the country. If the FPLS identifies a person as being a participant in a State child support case, that State will be notified. State requests to the FPLS for location information will also continue to be processed after October 1, 1998.

When individuals are hired by NLRB, the Agency may disclose to the FPLS their names, social security numbers, home addresses, dates of birth, dates of hire, and information identifying us as the employer. NLRB also may disclose

to FPLS names, social security numbers, and quarterly earnings of each NLRB employee, within 1 month of the end of the quarterly reporting period.

Information submitted by NLRB to the FPLS will be disclosed by the Office of Child Support Enforcement to the Social Security Administration for verification to ensure that the social security number provided is correct. The data disclosed by NLRB to the FPLS will also be disclosed by the Office of Child Support Enforcement to the Secretary of the Treasury for use in verifying claims for the advance payment of the earned income tax credit or to verify a claim of employment on a tax return.

8. The address of system locations and managers in NLRB–10 has been changed from ''NLRB, 1717 Pennsylvania Avenue, NW, Washington, DC 20570–0001'' to ''NLRB, 1099 14th Street, NW, Washington, DC 20570–0001.''

9. References to 29 CFR 102.117 citations have been changed to read as follows for the paragraphs in Notifications Procedures, 29 CFR 102.117(f); Records Access Procedures, 29 CFR 102.117(g) and (h); and Contesting Records Procedures, 29 CFR 102.117(i).

A report of the proposal to establish this system of records was filed pursuant to 5 U.S.C. 552(r) with Congress and the Office of Management and Budget.

Dated: Washington, DC, October 22, 1998.

By direction of the Board.

John J. Toner,

Executive Secretary.

NLRB–10

SYSTEM NAME:

Payroll/Personnel Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Personnel Branch, National Labor Relations Board, 1099 14th Street, NW, Washington, DC 20570–0001. Each Washington and field office maintains a copy of time and attendance records for current employees in its office, and is authorized to maintain such records on former employees of that office. See the attached appendix for addresses of these offices.

Inactive records are stored at the appropriate Federal records center in accordance with provisions of applicable General Records Schedules issued by National Archives and Records Administration.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former NLRB employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include employee's name, previous name if any, home address, date of birth, social security number, sex, race, time and attendance records, and employment histories, including prolonged leave without pay and monetary contributions to a retirement fund or thrift-savings plan made during employment and information relevant thereto. In addition, these records may also include:

A. Employment Payroll Records: These are magnetic tape and microfiche records containing information on current and former pay and leave status for individuals serviced by the automated payroll/personnel system.

B. Employee Pay Records: These are magnetic tape, microfiche, and individual paper folders containing information on savings bond deductions, savings account allotments, charitable contributions, child support and alimony, and Federal and state tax exemption certificates. The individual paper folders contain source documents, correspondence, and other papers in support of an active employee's pay and other allowances requested by the employee.

C. History of Earnings and Time and Attendance Records: These are paper copies and microfiche records containing information on earnings, time and attendance, leave, and other pay-related activities.

D. Copies of Retirement Records: These are copies of Individual Retirement Records, Civil Service Retirement (SF–2806) or the Federal Employees Retirement System (SF–3100) from the former payroll systems. These records will be used to update employees' records in cases of retroactive adjustments.

E. Former Employee Pay Records: These records are the employee pay records (A and C, above) for employees who have been separated, transferred, or retired. In addition to information contained in the Employee Pay Records, they include information related to retirement, separation or transfer, time and attendance, and leave. These records are destroyed after separation in accordance with the NARA General Records Schedule.

F. Unemployment Records: These records are the Unemployment Compensation Records for separated employees who seek unemployment benefits. They are maintained in a separate file.

G. Returned Check Records: These records are a manual log for recording and controlling checks issued to employees that were returned to the Agency because they were undelivered, erroneous, or canceled prior to conversion to cash.

H. Indebtedness Records: These records include source documents, correspondence, and other papers containing information regarding the Government's claims of debt against individuals covered by the system. These records are supplemented by hard copy or electronic records necessary to establish the identity and address of the individuals, including in certain cases, the taxpayer's mailing address provided by the Internal Revenue Service.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Agency head is responsible for establishing and maintaining an adequate payroll system, covering pay, leave, time and attendance, and allowances, in accordance with 5 U.S.C. 8301, 29 U.S.C. 153(a) and (d), 154; the Debt Collection Act of 1982 and 49 FR 27470 (salary offset provisions published 7/3/84) and 5 U.S.C. 8501–8508, Unemployment Compensation for Federal employees, the Debt Collection Improvement Act of 1996, and the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 Pub. L. 104–193, 316(f) codified at 42 U.S.C. 653.

PURPOSE:

These records document the payroll process as it relates to current and former NLRB employees, and are used to support various fiscal and personnel functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records or information contained therein may be disclosed to:

1. Individuals who need the information in connection with the processing of an appeal, grievance, or complaint.

2. The U.S. Department of Agriculture, National Finance Center.

3. The Office of Personnel Management concerning pay and benefits for administering the Civil Service/Federal Employees Retirement Systems, and other information necessary for the office to carry out its Government-wide personnel management functions.

4. State and local authorities for the purpose of verifying tax collections, unemployment compensation claims, and administering public assistance programs.

5. The U.S. Department of Health and Human Services for the administration of the social security program.

6. The U.S. General Accounting Office for audit purposes.

7. Other agencies, offices, establishments, and authorities, whether Federal, State, or local, authorized or charged with the responsibility to investigate, litigate, prosecute, enforce, or implement a statute, rule, regulation, or order, where the record or information, by itself or in connection with other records or information, indicates a violation or potential violation of law, whether criminal, civil, administrative or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto.

8. A Member of Congress or to a Congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the records are maintained.

9. An arbitrator to resolve disputes under a negotiated grievance arbitration procedure.

10. Officials of labor organizations recognized under 5 U.S.C. chapter 71, when disclosure is not prohibited by law; and the data is normally maintained by the Agency in the regular course of business and is reasonably available and necessary for full and proper discussion, understanding and negotiation of subjects within the scope of collective bargaining. The forgoing shall have the identical meaning as 5 U.S.C. 7114(b)(4) as interpreted by the FLRA and the courts.

11. The Department of Justice for use in litigation when either: (a) The NLRB or any component thereof: (b) an employee of the NLRB in his or her official capacity; (c) any employee of the NLRB in his or her individual capacity, where the Department of Justice has agreed to represent the employee; or (d) the United States Government where the NLRB determines that litigation is likely to affect the NLRB or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the NLRB to be relevant and necessary to the litigation, provided that in each case the Agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

12. A court, magistrate, administrative tribunal, or other adjudicatory body in the course of presenting evidence or argument, including disclosure to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, or in connection with criminal law proceedings, when: (a) The NLRB or any component thereof; or (b) any employee of the NLRB in his or her official capacity; or (c) any employee of the NLRB in his or her individual capacity where the NLRB has agreed to represent the employee; or (d) the United States Government is a party to litigation or has interest in such litigation, and determines that such disclosure is relevant and necessary to the litigation and that the use of such records is therefore deemed by the NLRB to be for a purpose that is compatible with the purpose for which the records were collected.

13. The U.S. Treasury Department for payroll purposes.

14. Names, social security numbers, home addresses, dates of birth, dates of hire, quarterly earnings, employer identifying information, and State of hire of employees may be disclosed to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for the purpose of locating individuals to establish paternity, establishing and modifying orders of child support, identifying sources of income, and for other child support enforcement actions required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, (Welfare Reform law, Pub. L. 104–193).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, on employment history cards, on microfiche, on computer disks and diskettes, on magnetic computer tapes, and on computer printouts.

RETRIEVABILITY:

Records are retrievable alphabetically by individual name and/or personal identifier (social security number).

SAFEGUARDS:

Maintained in file cabinets within the Payroll/Personnel Systems Unit. During duty hours, file cabinets are under surveillance of personnel charged with custody of the records, and after duty hours, records are behind locked doors. Computer records can be accessed only through use of confidential procedures and passwords. Access is limited to personnel who have a need for access to perform their official functions.

RETENTION AND DISPOSAL:

Files are disposed of according to applicable provisions of the General Records Schedules issued by the National Archives and Records Administration, and with General Accounting Office approval. Microfilm, magnetic strip ledgers, and microfiche are maintained for 56 years after the date of last entry, GRS 2.1.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel, NLRB, 1099 14th St., NW., Washington, DC 20570–1000. (See the attached appendix for the titles and addresses of officials of other locations responsible for this system at their locations.)

NOTIFICATION PROCEDURE:

An individual may inquire as to whether this system contains a record pertaining to her or him by directing a request to the system manager in accordance with the procedures set forth in 29 CFR 102.117(f).

RECORD ACCESS PROCEDURE:

An individual seeking to gain access to records in this system pertaining to her or him should contact the appropriate manager in accordance with the procedures set forth in 29 CFR 102.117 (g) and (h).

CONTESTING RECORD PROCEDURE:

An individual may request amendment of a record pertaining to such individual maintained in this system by directing a request to the appropriate system manager in accordance with procedures set forth in 29 CFR 102.117(i).

RECORD SOURCE CATEGORIES:

Personnel Branch, timekeepers, supervisors, and National Finance Center.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix

Names and Addresses of NLRB Offices referenced in Notice of Records System shown below.

NLRB Headquarters Offices: 1099 14th Street, NW, Washington, DC 20570–0001

Offices of the Board

Members of the Board
Executive Secretary, Office of the Executive Secretary
Director, Office of Representation Appeals
Director, Division of Information

Solicitor
Inspector General, Office of Inspector General
Chief Administrative Law Judge, 1099 14th Street, NW, Room 5400 East, Washington, DC 20570–0001
Associate Chief Administrative Law Judge, San Francisco Judges, 901 Market Street, Suite 300, San Francisco, California 94103–1779
Associate Chief Administrative Law Judge, New York Judges, 120 West 45th Street, 11th Floor, New York, New York 10036–5503
Associate Chief Administrative Law Judge, Atlanta Judges, Peachtree Summit Building, 401 W. Peachtree Street, NW, Suite 1708, Atlanta, Georgia 30308–3510

Offices of the General Counsel

General Counsel
Associate General Counsel, Division of Operations Management
Associate General Counsel, Division of Advice
Associate General Counsel, Division of Enforcement Litigation
Director, Division of Administration
Director, Equal Employment Opportunity

NLRB Field Offices

Regional Director, Region 1, Thomas P. O'Neal, Jr. Federal Office Building, 10 Causeway Street, 6th Floor, Boston, Massachusetts 02222–1072
Regional Director, Region 2, Jacob K. Javits Federal Building, 26 Federal Plaza, Room 3614, New York, New York 10278–0104
Regional Director, Region 3, Thaddeus J. Dulski Federal Building, 111 West Huron Street, Room 901, Buffalo, New York 14202–2387
Resident Officer, Albany Resident Office, Leo W. O'Brien Federal Building, Clinton Avenue at N. Pearl Street, Room 342, Albany, New York 12207–2350
Regional Director, Region 4, One Independence Mall, 615 Chestnut Street, 7th Floor, Philadelphia, Pennsylvania 19106–4404
Regional Director, Region 5, The Appraisers Store Building, 103 South Gay Street, 8th Floor, Baltimore, Maryland 21202–4026
Resident Officer, Franklin Court Building, 1099 14th Street, NW, Suite 5530, Washington, DC 20570–0001
Regional Director, Region 6, William S. Moorehead Federal Building, 1000 Liberty Avenue, Room 1501, Pittsburgh, Pennsylvania 15222–4173
Regional Director, Region 7, Patrick V. McNamara Federal Building, 477 Michigan Avenue, Room 300, Detroit, Michigan 48226–2569
Resident Officer, Grand Rapids Resident Office, The Furniture Company Building, 82 Ionia Northwest, Room 330, Grand Rapids, Michigan 49503–3022
Regional Director, Region 8, Anthony J. Celebrezze Federal Building, 1240 East 9th Street, Room 1695, Cleveland, Ohio 44199–2086
Regional Director, Region 9, Federal Office Building, 550 Main Street, Room 3003, Cincinnati, Ohio 45202–3271
Regional Director, Region 10, Harris Tower, 233 Peachtree Street, NE, Suite 1000, Atlanta, Georgia 30303–1504
Resident Officer, The Burger-Phillips Center, 1900 3rd Avenue North, Third Floor, Birmingham, Alabama 35203–3502
Regional Director, Region 11, Republic Square, Suite 200, 4035 University Parkway, Winston-Salem, North Carolina 27106–3325
Regional Director, Region 12, Enterprise Plaza, Suite 530, 201 East Kennedy Boulevard, Tampa, Florida 33602–5824
Resident Officer, Jacksonville Resident Office, Federal Building, 400 West Bay Street, Room 214, Box 35091, Jacksonville, Florida 32202–4412
Resident Officer, Miami Resident Office, Federal Building, 51 Southwest 1st Avenue, Room 1320, Miami, Florida 33130–1608
Regional Director, Region 13, 200 West Adams Street, Suite 800, Chicago, Illinois 60606–5208
Regional Director, Region 14, 1222 Spruce Street, Room 8.202, Saint Louis, Missouri 63103–2829
Regional Director, Region 15, 1515 Poydras Street, Room 610, New Orleans, Louisiana 70112–3723
Regional Director, Region 16, Federal Office Building, 819 Taylor Street, Room 8A24, Fort Worth, Texas 76102–6178
Resident Officer, Houston Resident Office, 440 Louisiana Street, Suite 550, Houston, Texas 77002–2649
Resident Officer, San Antonio Resident Office, 615 E. Houston Street, Room 565, San Antonio, Texas 78205–2040
Resident Officer, El Paso Resident Office, PO Box 23159, El Paso, Texas 79923–3159
Regional Director, Region 17, 8600 Farley Street, Suite 100, Overland Park, Kansas 66212–4677
Resident Officer, Tulsa Resident Office, 224 South Boulder Avenue, Room 316, Tulsa, Oklahoma 74103–4214
Regional Director, Region 18, Federal Building, 110 South 4th Street, Room 234, Minneapolis, Minnesota 55401–2291
Resident Officer, Des Moines Resident Office, Federal Building, 210 Walnut Street, Room 439, Des Moines, Iowa 50309–2116
Regional Director, Region 19, Henry M. Jackson Federal Building, 915 Second Avenue, Room 2948, Seattle, Washington 98174–1078
Resident Officer, Anchorage Resident Office, Federal Office Building, 222 West 7th Avenue, Box 21, Anchorage, Alaska 99513–3546
Officer in Charge, Subregion 36, 222 SW Columbia Street, Room 401, Portland, Oregon 97201–6604
Regional Director, Region 20, 901 Market Street, Suite 400, San Francisco, California 94103–1735
Officer in Charge, Subregion 37, Prince Kuhio Federal Building, 300 Ala Moana Boulevard, Room 7318, Honolulu, Hawaii 96850–4980
Regional Director, Region 21, 888 South Figueroa Street, 9th Floor, Los Angeles, California 90017–5449
Resident Officer, San Diego Resident Office, Pacific Professional Center, 555 West Beech Street, Suite 302, San Diego, California 92101–2939
Regional Director, Region 22, 20 Washington Place, 5th Floor, Newark, New Jersey 07102–2570
Regional Director, Region 24, La Torre de Plaza, 525 F.D. Roosevelt Avenue, Suite 1002, San Juan, Puerto Rico 00918–1002
Regional Director, Region 25, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 238, Indianapolis, Indiana 46204–1577
Region Director, Region 26, Mid-Memphis Tower Building, 1407 Union Avenue, Suite 800, Memphis, Tennessee 38104–3627
Resident Officer, Little Rock Resident Office, TCBY Tower, 425 West Capitol Avenue, Suite 375, Little Rock, Arkansas 72201–3489
Resident Officer, Nashville Resident Office, 810 Broadway, 3rd Floor, Nashville, Tennessee 37203–3816
Regional Director, Region 27, Dominion Plaza, North Tower, 600 17th Street, 7th Floor, Denver, Colorado 80202–5433
Regional Director, Region 28, Security Building, 234 North Central Avenue, Suite 440 Phoenix, Arizona 85004–2212
Resident Officer, Albuquerque Resident Office, Western Bank Plaza, 505 Marquette Avenue, NW, Room 1820, Albuquerque, New Mexico 87102–2181
Resident Officer, Las Vegas Resident Office, Alan Bible Federal Building, 600 Las Vegas Boulevard South, Suite 400, Las Vegas, Nevada 89101–6637
Regional Director, Region 29, One MetroTech Center, Jay Street and Myrtle Avenue, 10th Floor, Brooklyn, New York 11201–4201
Regional Director, Region 30, Henry S. Reuss Federal Plaza, Suite 700, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203–2211
Regional Director, Region 31, 11150 W. Olympic Boulevard, Suite 700, Los Angeles, California 90064–1824
Regional Director, Region 32, Breuner Building, 2nd Floor, 1301 Clay Street, Room 300N, Oakland, California 94612–5211
Regional Director, Region 33, Hamilton Square Building, Suite 200, 300 Hamilton Boulevard, Peoria, Illinois 61602–1246
Regional Director, Region 34, 1 Commercial Plaza, 21st Floor, Church and Trumbull Street, Hartford, Connecticut 06103–3599

[FR Doc. 98–30911 Filed 11–18–98; 8:45 am]
BILLING CODE 7545–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23533; File No. 812–11142]

The Mutual Life Insurance Company of New York, et al.

November 13, 1998.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of Application for Approval and Exemption under the Investment Company Act of 1940 (''1940 Act''). Order requested pursuant to Section 26(b) of the 1940 Act

approving the proposed substitution of securities and pursuant to Section 17(b) of the 1940 Act exempting the proposed transaction from the provisions of Section 17(a) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an Order approving the substitution of shares of the Money Market Portfolio Series (the ''MONY Money Market Portfolio'') of the MONY Series Fund, Inc. for shares of the Money Market Series (''OCC Money Market Portfolio'') of the OCC Accumulation Trust (the ''Trust''). Applicants also seek an Order exempting them from Section 17(a) of the 1940 Act to the extent necessary to permit Applicants to carry out the above-referenced substitution by redeeming shares of the OCC Money Market Portfolio in-kind or partly in-kind and using the redemption proceeds to purchase shares of the MONY Money Market Portfolio.

APPLICANTS: The Mutual Life Insurance Company of New York (''MONY'') and MONY Life Insurance Company of America (''MONY America'', and collectively with MONY ''the Companies''), their respective separate accounts, MONY Variable Account A (''MONY Account'') and MONY America Variable Account A (''MONY America Account'', and collectively with the MONY Account ''the Accounts''), OCC Accumulation Trust and MONY Series Fund (collectively with OCC Accumulation Trust, the Companies and the Accounts ''the Applicants'').

FILING DATE: The Application was filed on May 8, 1998, and amended and restated on September 16, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Commission's Secretary and serving the Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m., on December 8, 1998, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Frederick C. Tedeschi, Esq., The Mutual Life Insurance Company of New York, 1740 Broadway, New York, NY 10019. Copies to Deborah Kaback, Esq., Oppenheimer Capital, Two World Financial Center, New York, N.Y. 10281–1698.

FOR FURTHER INFORMATION CONTACT: Lorna MacLeod, Attorney, or Mark Amorosi, Special Counsel, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the Application. The complete Application is available for a fee from the Public Reference Branch of the Commission.

Applicants' Representations

1. MONY is a mutual life insurance company organized in the state of New York in 1842. MONY America is a stock insurance company organized in the state of Arizona. MONY America is the corporate successor of VICO Credit Life Insurance Company, incorporated in Arizona on March 6, 1969. MONY America is a wholly owned subsidiary of MONY. MONY and MONY America serve as sponsor and depositor of the MONY Account and MONY America Account, respectively.

2. MONY and MONY America established the MONY Account and MONY America Account on November 28, 1990 and March 27, 1987, respectively. The Accounts are segregated asset accounts registered with the Commission as unit investment trusts pursuant to the provisions of the 1940 Act and are used to fund certain individual and group flexible payment variable annuity contracts issued by the Companies and sold under the name ''ValueMaster'' (''ValueMaster Contracts'').

3. The Accounts are currently divided into various sub-accounts (''Sub-Accounts''), five of which are available to owners of ValueMaster Contracts (''ValueMaster Contractowners'') and which reflect the investment performance of the Bond, Equity, Managed, Money Market and Small Cap Series of the Trust, a registered investment company. ValueMaster Contractowners may transfer account values among the Sub-Accounts without any charge up to four times a year. For any additional transfers, a transfer charge is not currently imposed, however the Companies reserve the right to impose a charge, which will not exceed $25 per transfer. The ValueMaster Contracts are offered exclusively by agents of Oppenheimer Life Agency, Ltd., (''Oppenheimer Life''), which is not an affiliate of OpCap Advisors, a registered investment adviser and the Trust's investment manager. Neither Oppenheimer Life nor OpCap Advisors are affiliates of the Applicants. As of December 31, 1997, there were under 800 ValueMaster Contractowners with allocations totaling $2,166,258 to the OCC Money Market Portfolio, representing only 3% of the total assets invested in the Accounts by ValueMaster Contractowners. Oppenheimer Life is no longer actively selling the ValueMaster Contracts.

4. The Trust was established on May 12, 1994 and is a registered open-end management investment company consisting of seven separate series (''Portfolios'') with differing investment objectives, policies and restrictions. The Trust currently also offers shares of its Portfolios to accounts of other unaffiliated life insurance companies, to serve as the investment vehicle for their respective variable annuity and life insurance contracts.

5. The OCC Money Market Portfolio seeks maximum current income consistent with stability of principal and liquidity through investment in a portfolio of high quality money market instruments. Shares of the OCC Money Market Portfolio are purchased, without sales charge, by the Money Market Sub-Accounts of the respective Accounts at the net asset value per share next determined following receipt of a purchase payment by the Sub-Accounts. Any dividend or capital gain distributions received from the Portfolio is reinvested in additional shares of the Portfolio and retained as assets of the Sub-Accounts. Shares are redeemed without any charge or fee to the Accounts to the extent necessary for the Companies to make annuity or other payments under the ValueMaster Contracts. As of December 31, 1997, the OCC Money Market Portfolio had assets of $2,166,067 all of which were attributable to ValueMaster Contractowners. For the calendar year 1997, net redemptions by the Accounts of shares of the OCC Money Market Portfolio, not including dividend or capital gain reinvestments, totaled $3,312,805.

6. Like the OCC Money Market Portfolio, the MONY Money Market Portfolio seeks maximum current income consistent with stability of principal and liquidity through investment in a portfolio of high quality money market instruments. Shares of the MONY Money Market Portfolio are currently offered by the Companies as a funding vehicle for their variable products and, as such, are held by a segregated account of each insurance

company. As of December 31, 1997, the MONY Money Market Portfolio had assets of $158,286,237. For the calendar year 1997, net sales of shares of the MONY Money Market Portfolio, not including dividend or capital gain reinvestments, totaled $5,418,168.

7. Under the Investment Advisory Agreement (''Advisory Agreement'') between the Trust and OpCap Advisors, OpCap Advisors provide management and investment advisory services to the Trust and its Portfolios and is compensated by the Trust for services rendered to the OCC Money Market Portfolio on a monthly basis at the annual rate of .40 percent of the average daily net assets of the OCC Money Market Portfolio. Under the Advisory Agreement, OpCap Advisors has contractually agreed to limit the total expenses of the Portfolio to 1.00 percent of its average daily net assets. Pursuant to an Investment Advisory Agreement between the MONY Series Fund, Inc. and MONY America, MONY America provides management and investment advisory services to the MONY Money Market Portfolio of the MONY Series Fund, Inc. for an annual fee at the rate of .40% of the first $400 million of the aggregate average daily net assets of the portfolio; .35% of the next $400 million of the aggregate average daily net assets of the portfolio and .30% of the aggregate average daily net assets of the portfolio in excess of $800 million. For the year ended December 31, 1997, the ratio of net operating expenses to average net assets for the OCC Money Market Portfolio was .98% as compared to .46% for the MONY Money Market Portfolio for the year ended December 31, 1997.

8. The ValueMaster Contracts reserve to the Companies the right to replace the shares of the Portfolios held by the Accounts with shares of another portfolio, such as the MONY Money Market Portfolio, if (i) shares of the Portfolio should no longer be available for investment by the Accounts; or (ii) in the judgment of the Companies, further investment in the Portfolio should become inappropriate in view of the purpose of the ValueMaster Contracts, provided any such substitution is approved by the Commission and is in compliance with applicable rules and regulations. The Companies believe that further investment in shares of the OCC Money Market Portfolio is no longer appropriate in view of the purposes of the ValueMaster Contracts.

9. The decreasing asset base of the OCC Money Market Portfolio, based upon lack of interest by ValueMaster Contractowners in the Portfolio as evidenced by net redemption of Portfolio shares, has made it difficult for the Portfolio to retain current investors and attract new investors. Moreover, Oppenheimer Life Agency's limited effort in actively selling the ValueMaster Contract, coupled with a constant amount of fixed costs incurred by the Portfolio, can reasonably be expected to lead to an increase in the actual expenses of the OCC Money Market Portfolio in the future.

10. The relative small asset size of the OCC Money Market Portfolio hampers the ability to maintain optimal diversification. The MONY Money Market Portfolio can be expected to achieve greater diversification and more readily react to changes in market conditions. ValueMaster Contractowners will benefit through the more effective management of a larger portfolio such as the MONY Money Market Portfolio.

11. The Companies on their own behalf and on behalf of the Accounts respectively, propose to substitute shares of the MONY Money Market Portfolio for all shares of the OCC Money Market Portfolio attributable to the ValueMaster Contracts (''Substitution''). The Substitution will occur as soon as practicable after receipt of the Order. As of the effective date of the Substitution, the Companies will redeem shares of the OCC Money Market Portfolio. Simultaneously, the Companies will use the proceeds to purchase the appropriate number of shares of the MONY Money Market Portfolio. The Substitution will take place at relative net asset values of the Portfolios, with no change in the amount of any ValueMaster Contractowner's account value.

12. To alleviate the impact of brokerage fees and expenses upon the OCC Money Market Portfolio and ultimately OpCap Advisors, the Trust and OpCap Advisors propose that the redemption of the OCC Money Market Portfolio shares be accomplished, in part, by ''in kind'' transactions. Under the proposal, the Trust would transfer to the Companies their proportionate interest in cash and/or securities held by the OCC Money Market Portfolio on the date of the Substitution, and the Companies will then use such cash and/or securities to purchase shares of the MONY Money Market Portfolio. The valuation of any ''in kind'' transfers will be on a basis consistent with the valuation procedures of the OCC Money Market and MONY Money Market Portfolios.

Terms and Conditions

Applicants agree to the following terms and conditions:

1. The OCC Money Market and MONY Money Market Portfolios have substantially similar investment objectives, policies and restrictions.

2. The Substitution will take place at the net asset value of the respective shares, which both portfolios seek to maintain at $1.00 per share, with no change in the amount of any ValueMaster Contractowner's account value and without the imposition of any transfer or similar charge.

3. The valuation of any ''in kind'' transfer will be on a basis consistent with the valuation procedures of the OCC Money Market and MONY Money Market Portfolios.

4. ValueMaster Contractowners will not incur any fees or charges as a result of the proposed substitution. OpCap Advisors will assume any expenses and transaction costs, including legal and accounting fees and any brokerage commissions, relating to the Substitution. To the extent the OCC Money Market Portfolio incurs brokerage fees and expenses in connection with the redemption by the Companies of its shares, these expenses would be charged to the applicable Portfolio but borne by OpCap Advisors.

5. The proposed substitution will not cause the contract fees and charges currently being paid by existing contractowners to be greater after proposed substitution than before the substitution.

6. Before the Substitution occurs, the prospectuses for the Accounts will be supplemented to reflect the proposed Substitution (the ''Application Supplements'') and distributed to all ValueMaster Contractowners.

7. Within five days after the Substitution, the Companies will send to ValueMaster Contractowners written notice of the Substitution (the ''Notice'') stating that shares of the OCC Money Market Portfolio have been eliminated and that the shares of the MONY Money Market Portfolio have been substituted. The Companies will include in such mailing a second supplement to the prospectuses of the Accounts which discloses that the Substitution has occurred. The Notice will also advise ValueMaster Contractowners that for a period of thirty days from the mailing of the Notice, they may transfer all assets, as substituted, to any other available Sub-Account, without limitation and without the transfer being deemed a transfer for purposes of determining any transfer charge (the period from the date of the Application Supplements to

thirty days from the mailing of the Notice is the ''Free Transfer Period'').

8. The Substitution will not in any way alter the insurance benefits or contractual obligations of the Companies to ValueMaster Contractowners or tax benefits and consequences to ValueMaster Contractowners. Following the Substitution, ValueMaster Contractowners will be afforded the same surrender and other transfer rights as they currently have. Any applicable surrender (contingent deferred sales) charges will continue to be imposed but will not be affected in any way by the Substitution.

Applicants' Legal Analysis

1. Section 26(b) of the 1940 Act provides, in pertinent part, that ''[i]t shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution.'' Section 26(b) of the 1940 Act further provides that the Commission shall issue an order approving such substitution if the evidence establishes that the substitution is consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

2. The purpose of Section 26(b) is to protect the expectation of investors in a unit investment trust that the unit investment trust will accumulate the share of a particular issuer and to prevent unscrutinized substitutions which might, in effect, force shareholders dissatisfied with the substituted security to redeem their shares, thereby possibly incurring either a loss of the sales load deducted from initial purchase payments, an additional sales load upon reinvestment of the redemption proceeds, or both. Section 26(b) affords this protection to investors by preventing a depositor or trustee of a unit investment trust holding the shares of one issuer from substituting for those shares the shares of another issuer, unless the Commission approves that substitution.

3. Applicants assert that the purposes, terms and conditions of the proposed Substitution are consistent with the principles and purposes of Section 26(b) and do not entail any of the abuses that Section 26(b) is designed to prevent. Applicants further assert that the Substitution will not result in the type of costly forced redemption that Section 26(b) was intended to guard against and is consistent with the protection of investors and the purposes fairly intended by the 1940Act.

4. Section 17(a)(1) of the 1940 Act prohibits an affiliated person of a registered investment company or an affiliated person of such person, acting as principal, from selling any security or other property to such registered investment company. Section 17(a)(2) of the 1940 Act prohibits any of such affiliated persons, acting as principal, from purchasing any security or other property from such registered investment company. The transfer or proceeds emanating out of the redemption of share in-kind of the OCC Money Market Portfolio to the Money Market Sub-Account and the purchase by the Money Market Sub-Account of shares of the MONY Money Market Portfolio could be deemed to involve a sale between the OCC Money Market Portfolio and the Money Market Sub-Account (which may be considered to be affiliates of each other because all the shares of the OCC Money Market Portfolio are held by the Money Market Sub-Account), and a purchase between the Money Market Sub-Account and the MONY Money Market Portfolio, each of which is affiliated person of the other.

5. Section 17(b) provides that the Commission may grant an order exemption a proposed transaction provided: (a) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person; (b) the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the 1940 Act; and (c) the proposed transaction is consistent with the general purposes of the 1940 Act.

6. Applicants assert that the terms of the proposed transaction are reasonable and fair and do not involve overreaching; the transaction is consistent with the policy of each investment company concerned and with the purposes of the 1940 Act; and the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

7. Applicants assert that the Substitution is an appropriate solution to the limited ValueMaster Contractowner interest or investment in the OCC Money Market Portfolio, which is currently and in the future may be expected to be, of insufficient size to promote consistent investment performance or to reduce operating expenses.

Conclusion

Applicants assert that, for the reasons summarized above, the requested order approving the substitution and related transactions involving in-kind redemptions and purchases should be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–30949 Filed 11–18–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23532; 812–11340]

T. Rowe Price Associates, Inc., et al.; Notice of Application

November 12, 1998.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the ''Act'') under (i) section 6(c) of the Act granting an exemption from sections 18(f) and 21(b) of the Act; (ii) section 12(d)(1)(J) of the Act granting an exemption from section 12(d)(1) of the Act; (iii) sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and 17(a)(3) of the Act; and (iv) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements.

SUMMARY OF APPLICATION: Applicants request an order that would permit certain registered investment companies to participate in a joint lending and borrowing facility.

APPLICANTS: Price Blue Chip Growth Fund, Inc., T. Rowe Price Capital Appreciation Fund, T. Rowe Price Capital Opportunity Fund, Inc., T. Rowe Price Diversified Small-Cap Growth Fund, Inc., T. Rowe Price Dividend Growth Fund, Inc., T. Rowe Price Equity Income Fund, T. Rowe Price Equity Series, Inc., T. Rowe Price Equity Income Portfolio, T. Rowe Price Mid-Cap Growth Portfolio, T. Rowe Price New America Growth Portfolio, T. Rowe Price Personal Strategy Balanced Portfolio, T. Rowe Price Financial Services Fund, Inc., T. Rowe Price Growth & Income Fund, Inc., T. Rowe Price Growth Stock Fund, Inc., T. Rowe Price Health Sciences Fund, Inc., T. Rowe Price Index Trust, Inc., T. Rowe Price Equity Index 500 Fund, T. Rowe Price Extended Equity Market Index Fund, T. Rowe Price Total Equity Market Index Fund, Institutional

International Funds, Inc., Foreign Equity Fund, T. Rowe Price International Funds, Inc., T. Rowe Price International Discovery Fund, T. Rowe Price International Stock Fund, T. Rowe Price European Stock Fund, T. Rowe Price New Asia Fund, T. Rowe Price Japan Fund, T. Rowe Price Latin America Fund, T. Rowe Price Emerging Markets Stock Fund, T. Rowe Price Global Stock Fund, T. Rowe Price International Bond Fund, T. Rowe Price Global Government Bond Fund, T. Rowe Price Emerging Markets Bond Fund, T. Rowe Price International Series, Inc., T. Rowe Price International Stock Portfolio, T. Rowe Price Mid-Cap Growth, Inc., T. Rowe Price Mid-Cap Value Fund, Inc., T. Rowe Price New America Growth Fund, T. Rowe Price New Era Fund, Inc., T. Rowe Price New Horizons Fund, Inc., T. Rowe Price Real Estate Fund, Inc., T. Rowe Price Small Cap Stock Fund, Inc., T. Rowe Price Small Cap Stock Fund, T. Rowe Price Science & Technology Fund, Inc., T. Rowe Price Small-Cap Value Fund, Inc., T. Rowe Price Spectrum Fund, Inc., Spectrum Growth Fund, Spectrum Income Fund, Spectrum International Fund, T. Rowe Price Value Fund, Inc., T. Rowe Price Media & Telecommunications Fund, Inc., T. Rowe Price California Tax-Free Income Trust, California Tax-Free Bond Fund, California Tax-Free Money Fund, T. Rowe Price Corporate Income Fund, Inc., T. Rowe Price Fixed Income Series, Inc. T. Rowe Price Limited-Term Bond Portfolio, T. Rowe Price Prime Reserve Portfolio, T. Rowe Price GNMA Fund, T. Rowe Price High Yield Fund, Inc., T. Rowe Price New Income Fund, Inc., T. Rowe Price Personal Strategy Funds, Inc., T. Rowe Price Personal Strategy Balanced Fund, T. Rowe Price Personal Strategy Growth Fund, T. Rowe Price Personal Strategy Income Fund, T. Rowe Price Prime Reserve Fund, Inc., Reserve Investment Funds, Inc., Government Reserve Investment Fund, Reserve Investment Fund, T. Rowe Price Short-Term Bond Fund, Inc., T. Rowe Price Short-Term U.S. Government Fund, Inc., T. Rowe Price Tax Efficient Balanced Fund, Inc., T. Rowe Price State Tax-Free Income Trust, Maryland Tax-Free Bond Fund, Maryland Short-Term Tax-Free Bond Fund, New York Tax-Free Bond Fund, New York Tax-Free Money Fund, Virginia Tax-Free Bond Fund, Virginia Short-Term Tax-Free Bond Fund, New Jersey Tax-Free Bond Fund, Georgia Tax-Free Bond Fund, Florida Insured Intermediate Tax-Free Fund, T. Rowe Price Summit Funds, Inc., T. Rowe Price Summit Cash Reserves Fund, T. Rowe Price Summit Limited-Term Bond Fund, T. Rowe Price Summit GNMA Fund, T. Rowe Price Summit Municipal Funds, Inc., T. Rowe Price Summit Municipal Money Market Fund, T. Rowe Price Summit Municipal Intermediate Fund, T. Rowe Price Summit Municipal Income Fund, T. Rowe Price Tax-Exempt Money Fund, Inc., T. Rowe Price Tax-Free High Yield Fund, Inc., T. Rowe Price Tax-Free Income Fund, Inc., T. Rowe Price Tax-Free Insured Intermediate Bond Fund, Inc., T. Rowe Price Tax-Free Short-Intermediate Fund, Inc., T. Rowe Price U.S. Treasury Funds, Inc., U.S. Treasury Intermediate Fund, U.S. Treasury Long-Term Fund, U.S. Treasury Money Fund, Institutional Domestic Equity Funds, Inc., and Mid-Cap Equity Growth Fund (collectively, the ''Price Funds''); T. Rowe Price Associates, Inc. (''T. Rowe Price'') and Rowe Price-Fleming International, Inc. (''Price-Fleming''); and all other registered investment companies and their series that are advised or subadvised by T. Rowe Price or Price-Fleming or a person controlling, controlled by, or under common control with T. Rowe Price or Price-Fleming, and all other registered investment companies and their series for which T. Rowe Price or Price-Fleming in the future acts as an investment adviser or subadviser, other than funds which are not sponsored by T. Rowe Price or Price-Fleming (together with the Price Funds, the ''Funds'' or the ''Price Funds'').

FILING DATES: The application was filed on September 30, 1998. Applicants have agreed to file an amendment during the notice period, the substance of which is included in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the SEC orders a hearing. Interested person may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 7, 1998, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing request should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549. Applicants, T. Rowe Price Associates, Inc., 100 E. Pratt Street, Baltimore, Maryland 21202.

FOR FURTHER INFORMATION CONTACT: J. Amanda Machen, Senior Counsel, (202) 942–7120, or Mary Kay Frech, Branch Chief, (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, NW, Washington, DC 20549 (tel. 202–942–8090).

Applicants' Representations

1. Each Price Fund is registered under the Act as an open-end management investment company and is organized either as a Maryland corporation or a Massachusetts business trust. Additional funds or series may be added in the future.[1] T. Rowe Price and Price Fleming (together, ''Price'') are registered under the Investment Advisers Act of 1940, and serve as investment advisers to the Price Funds. T. Rowe Price also provides the Price Funds with certain administrative services. Each Fund has entered into an investment advisory agreement with Price under which Price exercises discretionary authority to purchase and sell securities for the Funds.

2. Under an existing order, the Price Funds (other than the municipal funds) can use their cash reserves to purchase shares of the Reserve Investment Funds, Inc. (''Reserve Investment Funds'').[2] There are two series of the Reserve Investment Funds and each is a money market fund that complies with rule 2a–7 under the Act.[3] Each manages the cash reserves of T. Rowe Price clients, principally, the Price Funds, and neither is offered to the public. T. Rowe Price receives no compensation for managing the Reserve Investment Funds.

3. Some Funds may lend money to banks or other entities by entering into repurchase agreements or purchasing other short-term instruments, either directly or through the Reserve Investment Funds. Other Funds may borrow money from the same or other

[1] All existing Funds that currently intend to rely on the order have been named as applicants, and any other existing or future Fund that subsequently may rely on the order will comply with the terms and conditions in the application.

[2] Reserve Investment Funds, Inc., Investment Company Act Release Nos. 22732 (July 2, 1997) (notice) and 22770 (July 29, 1997) (order).

[3] The Reserve Investment Fund invests in a variety of taxable money market instruments, and the Government Reserve Investment Fund invests only in money market securities backed by the full faith and credit of the U.S. government and fully collateralized repurchase agreements on those securities.

banks for temporary purposes to satisfy redemption requests or to cover unanticipated cash shortfalls such as a trade ''fail'' in which cash payment for a portfolio security sold by a Fund has been delayed. Currently, the Funds have credit arrangements with their custodians (*i.e.*, overdraft protection) under which the custodians may, but are not obligated to, lend money to the Funds to meet the Funds' temporary cash needs.

4. If the Funds were to borrow money from any bank under their current arrangements or under other credit arrangements, the Funds would pay interest on the borrowed cash at a rate which would be significantly higher than the rate that would be earned by other (non-borrowing) Funds on investments in repurchase agreements and other short-term instruments of the same maturity as the bank loan. Applicants believe this differential represents the bank's profit for serving as a middleman between a borrower and lender. Other bank loan arrangements, such as committed lines of credit, would require the funds to pay substantial commitment fees in addition to the interest rate to be paid by the borrowing fund.

5. Applicants request an order that would permit the funds to enter into lending agreements (''Interfund Lending Agreements'') under which the Funds would lend and borrow money for temporary purposes directly to and from each other through a credit facility (''Interfund Loan''). Applicants believe that the proposed credit facility would substantially reduce the Funds' potential borrowing costs and enhance their ability to earn higher rates of interest on short-term lendings. Although the proposed credit facility would substantially reduce the Funds' need to borrow from banks, the Funds would be free to establish committed lines of credit or other borrowing arrangements with banks. The Funds also would continue to maintain overdraft protection currently provided by their custodians.

6. Applicants anticipate that the credit facility would provide a borrowing Fund with significant savings when the cash position of the Fund is insufficient to meet temporary cash requirements. This situation could arise when redemptions exceed anticipated volumes and the Funds have insufficient cash on hand to satisfy such redemptions. When the Funds liquidate portfolio securities to meet redemption requests, which normally are effected immediately, they often do not receive payment in settlement for up to three days (or longer for certain foreign transactions). The credit facility would provide a source of immediate, short-term liquidity pending settlement of the sale of portfolio securities.

7. Applicants also propose using the credit facility when a sale of securities fails due to circumstances such as a delay in the delivery of cash to the Fund's custodian or improper delivery instructions by the broker effecting the transaction. Sales fails may present a cash shortfall if the Fund has undertaken to purchase a security with the proceeds from securities sold. When the Fund experiences a cash shortfall due to a sales fail, the custodian typically extends temporary credit to cover the shortfall and the Fund incurs overdraft charges. Alternatively, the Fund could fail on its intended purchase due to lack of funds from the previous sale, resulting in additional cost to the Fund, or sell a security on a same day settlement basis, earning a lower return on the investment. Use of the credit facility under these circumstances would enable the Fund to have access to immediate short-term liquidity without incurring custodian overdraft or other charges.

8. While borrowing arrangements with banks will continue to be available to cover unanticipated redemptions and sales fails, under the proposed credit facility a borrowing Fund would pay lower interest rates than those offered by banks on short-term loans. In addition, funds making short-term cash loans directly to other Funds would earn interest at a rate higher than they otherwise could obtain from investing their cash in repurchase agreements or the Reserve Investment Funds. Thus, applicants believe that the proposed credit facility would benefit both borrowing and lending Funds.

9. The interest rate charges to the Funds on any Interfund Loan (the ''Interfund Loan Rate'') would be the average of the ''Repo Rate'' and the ''Bank Loan Rate,'' both as defined below. The Repo Rate for any day would be the highest rate available to the Reserve Investment Funds from investments in overnight repurchase agreements. The Bank Loan Rate for any day would be calculated by Price each day an Interfund Loan is made according to a formula established by the Funds' directors (the ''Directors'') designed to approximate the lowest interest rate at which bank short-term loans would be available to the funds. The formula would be based upon a publicly available rate (*e.g.*, Federal Funds plus 25 basis points) and would vary with this rate so as to reflect changing bank loan rates. Each Fund's Directors periodically would review the continuing appropriateness of using the publicly available rate, as well as the relationship between the Bank Loan Rate and current bank loan rates that would be available to the Funds. The initial formula and any subsequent modifications to the formula would be subject to the approval of each Fund's Directors.

10. The credit facility would be administered by T. Rowe Price's fund accounting and treasury departments (collectively, the ''Credit Facility Team''). Under the proposed credit facility, the portfolio managers for each participating fund may provide standing instructions to participate daily as a borrower or lender. As in the case of the Reserve Investment Funds, T. Rowe Price on each business day would collect data on the uninvested cash and borrowing requirements of all participating Funds from the Funds' custodians. Once it had determined the aggregate amount of cash available for loans and borrowing demand, the Credit Facility Team would allocate loans among borrowing Funds without any further communication from portfolio managers. Applicants expect far more available uninvested cash each day than borrowing demand. After allocating cash for Interfund Loans, T. Rowe Price will invest any remaining cash in accordance with the standing instructions from portfolio managers or return remaining amounts to the Funds. The money market funds typically would not participate as borrowers because they rarely need to borrow cash to meet redemptions.

11. The Credit Facility Team would allocate borrowing demand and cash available for lending among the Funds on what the Team believes to be an equitable basis, subject to certain administrative procedures applicable to all funds, such as the time of filing requests to participate, minimum loan lot sizes, and the need to minimize the number of transactions and associated administrative costs. To reduce transaction costs, each loan normally would be allocated in a manner intended to minimize the number of participants necessary to complete the loan transaction.

12. T. Rowe Price would (i) monitor the interest rates charged and the other terms and conditions of the loans, (ii) limit the borrowings and loans entered into by each Fund to ensure that they comply with the Fund's investment policies and limitations, (iii) ensure equitable treatment of each Fund, and (iv) make quarterly reports to the Directors concerning any transactions by the Funds under the credit facility and the interest rates charged. The

method of allocation and related administrative procedures would be approved by each Fund's Directors, including a majority of Directors who are not ''interested persons'' of the Funds, as defined in section 2(a)(19) of the Act (''Independent Directors''), to ensure that both borrowing and lending Funds participate on an equitable basis.

13. T. Rowe Price would administer the credit facility as part of its duties under its existing management or advisory and service contract with each Fund and would receive no additional fee as compensation for its services. T. Rowe Price or companies affiliated with it may collect standard pricing, recordkeeping, bookkeeping, and accounting fees applicable to repurchase and lending transactions generally, including transactions effected through the credit facility. Fees would be no higher than those applicable for comparable bank loan transactions.

14. Each Fund's participation in the proposed credit facility will be consistent with its organizational documents and its investment policies and limitations. The prospectus of each Price Fund discloses that the Price Fund (other than the variable annuity and life portfolios) may borrow money for temporary purposes in amounts up to 33⅓% of its total assets.[4] Each Price Fund may mortgage or pledge securities as security for borrowings in amounts up to 33⅓% of its total assets. Each Fund may lend securities or other assets if, as a result, no more than 33⅓% of its total assets would be lent to other parties.

15. The prospectus of each Price Fund discloses that the Funds may borrow money and lend securities and other assets. The Statement of Additional Information (''SAI'') for the Price Funds also provides that the Funds will not borrow from or lend to any other Price Fund unless each Fund applies for and receives an exemptive order from the SEC or the SEC issues rules permitting the transactions. If applicants' requested order is granted, each Fund will amend its SAI to reflect its ability and intention to engage in interfund lending and borrowing. All borrowings and loans by the Funds will be consistent with the organizational documents and investment policies of the respective Funds.

[4] Price Funds used exclusively as funding vehicles for variable annuity or life contracts have an operating policy which states ''the Fund will limit borrowing for any variable annuity separate account to (1) 10% of net asset value when borrowing for any general purpose, and (2) 25% of net asset value when borrowing as a temporary measure to facilitate redemptions.''

16. In connection with the credit facility, applicants request an order under (i) section 6(c) of the Act granting relief from sections 18(f) and 21(b) of the Act; (ii) section 12(d)(1)(J) of the Act granting relief from section 12(d)(1) of the Act; (iii) sections 6(c) and 17(b) of the Act granting relief from sections 17(a)(1) and 17(a)(3) of the Act; and (iv) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements.

Applicants' Legal Analysis

1. Section 17(a)(3) generally prohibits any affiliated person, or affiliated person of an affiliated person, from borrowing money or other property from a registered investment company. Section 21(b) generally prohibits any registered management investment company from lending money or other property to any person if that person controls or is under common control with the company. Section 2(a)(3)(C) of the Act defines an ''affiliated person'' of another person, in part, to be any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that the Funds may be under common control by virtue of having Price as their common investment adviser, and because of the overlap of Directors and officers of the Funds.

2. Section 6(c) provides that an exemptive order may be granted where an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) authorizes the SEC to exempt a proposed transaction from section 17(a) provided that the terms of the transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policy of the investment company as recited in its registration statement and with the general purposes of the Act. Applicants believe that the proposed arrangements satisfy these standards for the reasons discussed below.

3. Applicants submit that sections 17(a)(3) and 21(b) of the Act were intended to prevent a person with strong potential adverse interests to and some influence over the investment decisions of a registered investment company from causing or inducing the investment company to engage in lending transactions that unfairly inure to the benefit of that person and that are detrimental to the best interests of the investment company and its shareholders. Applicants assert that the proposed credit facility transactions do not raise these concerns because (i) Price would administer the program as a disinterested fiduciary; (ii) all Interfund Loans would consist only of uninvested cash reserves that the Fund otherwise would invest in short-term repurchase agreements or other short-term instruments either directly or through the Reserve Investment Funds; (iii) the Interfund Loans would not involve a greater risk than other similar investments; (iv) the lending Fund would receive interest at a rate higher than it could obtain through other similar investments; and (v) the borrowing Fund would pay interest at a rate lower than otherwise available to it under its bank loan agreements and avoid the up-front commitment fees associated with committed lines of credit. Moreover, applicants believe that the other conditions in the application would effectively preclude the possibility of any Fund obtaining an undue advantage over any other Fund.

4. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any securities or other property to the company. Section 12(d)(1) of the Act generally makes it unlawful for a registered investment company to purchase or otherwise acquire any security issued by any other investment company except in accordance with the limitations set forth in that section. Applicants believe that the obligation of a borrowing Fund to repay an Interfund Loan may constitute a security under sections 17(a)(1) and 12(d)(1). Section 12(d)(1)(J) provides that the SEC may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent such exception is consistent with the public interest and the protection of investors. Applicants contend that the standards under sections 6(c), 17(b) and 12(d)(1) are satisfied for all the reasons set forth above in support of their request for relief from sections 17(a)(3) and 21(b) and for the reasons discussed below.

5. Applicants state that section 12(d) was intended to prevent the pyramiding of investment companies in order to avoid duplicative costs and fees attendant upon multiple layers of investment companies. Applicants submit that the proposed credit facility does not involve these abuses. Applicants note that there would be no duplicative costs or fees to the Funds or shareholders, and that Price would receive no additional compensation for its services in administering the credit facility. Applicants also note that the

purpose of the proposed credit facility is to provide economic benefits for all the participating Funds.

6. Section 18(f)(1) prohibits open-end investment companies from issuing any senior security except that a company is permitted to borrow from any bank, if immediately after the borrowing, there is an asset coverage of at least 300 per cent for all borrowings of the company. Under section 18(g) of the Act, the term ''senior security'' includes any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness. Applicants request exemptive relief from section 18(f)(1) to the limited extent necessary to implement the credit facility (because the lending Funds are not banks).

7. Applicants believe that granting relief under section 6(c) is appropriate because the Funds would remain subject to the requirement of section 18(f)(1) that all borrowings of the Fund, including combined credit facility and bank borrowings, have at least 300% asset coverage. Based on the conditions and safeguards described in the application, applicants also submit that to allow the Funds to borrow from other Funds pursuant to the proposed credit facility is consistent with the purposes and policies of section 18(f)(1).

8. Section 17(d) and rule 17d–1 generally prohibit any affiliated person of a registered investment company, or affiliated person of an affiliated person, when acting as principal, from effecting any joint transaction in which the company participates unless the transaction is approved by the SEC. Rule 17d–1 provides that in passing upon applications for exemptive relief from section 17(d), the SEC will consider whether the participation of a registered investment company in a joint enterprise on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which the company's participation is on a basis different from or less advantageous than that of other participants.

9. Applicants submit that the purpose of section 17(d) is to avoid overreaching by and unfair advantage to investment company insiders. Applicants believe that the credit facility is consistent with the provisions, policies and purposes of the Act in that it offers both reduced borrowing costs and enhanced returns on loaned funds to all participating Funds and their shareholders. Applicants note that each Fund would have an equal opportunity to borrow and lend on equal terms consistent with its investment policies and fundamental investment limitations. Applicants therefore believe that each Fund's participation in the credit facility will be on terms which are no different from or less advantageous than that of other participating Funds.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. The interest rates to be charged to the Funds under the credit facility will be the average of the Repo Rate and the Bank Loan Rate.

2. On each business day, Price will compare the Bank Loan Rate with the Repo Rate and will make cash available for Interfund Loans only if the Interfund Loan Rate is (a) more favorable to the lending Fund than the Repo Rate and the yield on the Reserve Investment Fund (for Price Funds which invest in that Fund) and the yield on the Government Reserve Investment Fund (for Price Funds which invest in that fund), and (b) more favorable to the borrowing Fund than the Bank Loan Rate.

3. If a Fund has outstanding borrowings, any Interfund Loans to the Fund (a) will be at an interest rate equal to or lower than any outstanding bank loan, (b) will be secured at least on an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding bank loan that requires collateral, (c) will have a maturity no longer than any outstanding bank loan (and in any event not over seven days), and (d) will provide that, if an event of default occurs under any agreement evidencing an outstanding bank loan to the Fund, that event of default will automatically (without need for action or notice by the lending Fund) constitute an immediate event of default under the Interfund Lending Agreement entitling the lending Fund to call the Interfund Loan (and exercise all rights with respect to any collateral) and that such call will be made if the lending bank exercises its right to call its loan under its agreement with the borrowing Fund.

4. A Fund may make an unsecured borrowing through the credit facility if its outstanding borrowings from all sources immediately after the interfund borrowing total less than 10% of its total assets, provided that if the Fund has a secured loan outstanding from any other lender, including but not limited to another Fund, the Fund's interfund borrowing will be secured on at least an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding loan that requires collateral. If a Fund's total outstanding borrowings immediately after interfund borrowing would be greater than 10% of its total assets, the Fund may borrow through the credit facility on a secured basis only. A Fund may not borrow through the credit facility or from any other source if its total outstanding borrowings immediately after the interfund borrowing would be more than 33⅓% of its total assets.

5. Before any Fund that has outstanding interfund borrowings may, through additional borrowings, cause its outstanding borrowings from all sources to exceed 10% of its total assets, the Fund must first secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan. If the total outstanding borrowings of a Fund with outstanding Interfund Loans exceeds 10% of its total assets for any other reason (such as decline in net asset value or because of shareholder redemptions), the Fund will within one business day thereafter: (a) Repay all its outstanding Interfund Loans, (b) reduce its outstanding indebtedness to 10% or less of its total assets, or (c) secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at last equal to 102% of the outstanding principal value of the loan until the Fund's total outstanding borrowings cease to exceed 10% of its total assets, at which time the collateral called for by this condition (5) shall no longer be required. Until each Interfund Loan that is outstanding at any time that a Fund's total outstanding borrowings exceeds 10% is repaid or the Fund's total outstanding borrowings cease to exceed 10% of its total assets, the Fund will mark the value of the collateral to market each day and will pledge such additional collateral as is necessary to maintain the market value of the collateral that secures each outstanding Interfund Loan at least equal to 102% of the outstanding principal value of the loan.

6. No equity, taxable bond or Money Market Fund may lend to another Fund through the credit facility if the loan would cause its aggregate outstanding loans through the credit facility to exceed 5%, 7.5% or 10%, respectively, of its net assets at the time of the loan.

7. A Fund's Interfund Loans to any one Fund shall not exceed 5% of the lending Fund's net assets.

8. The duration of Interfund Loans will be limited to the time required to receive payment for securities sold, but in no event more than seven days. Loans effected within seven days of each other will be treated as separate loan transactions for purposes of this condition.

9. A Fund's borrowings through the credit facility, as measured on the day when the most recent loan was made, will not exceed the greater of 125% of the Fund's total net cash redemptions and 102% of sales fails for the preceding seven calendar days.

10. Each Interfund Loan may be called on one business day's notice by the lending Fund and may be repaid on any day by the borrowing Fund.

11. A Fund's participation in the credit facility must be consistent with its investment policies and limitations and organizational documents.

12. Price's Credit Facility Team will calculate total Fund borrowing and lending demand through the credit facility, and allocate loans on an equitable basis among the Funds without the intervention of any portfolio manager of the Funds. The Credit Facility Team will not solicit cash for the credit facility from any Fund or prospectively publish or disseminate loan demand data to portfolio managers. Price will invest any amounts remaining after satisfaction of borrowing demand in accordance with the standing instructions from portfolio managers or return remaining amounts for investment to the Funds.

13. Price will monitor the interest rates charged and the other terms and conditions of the Interfund Loans and will make a quarterly report to the Directors concerning the participation of the Funds in the credit facility and the terms and other conditions of any extensions of credit under the facility.

14. The Directors of each Fund, including a majority of the Independent Directors: (a) will review no less frequently than quarterly the Fund's participation in the credit facility during the preceding quarter for compliance with the conditions of any order permitting the transactions; (b) will establish the Bank Loan Rate formula used to determine the interest rate on Interfund Loans and review no less frequently than annually the continuing appropriateness of the Bank Loan Rate formula; and (c) will review no less frequently than annually the continuing appropriateness of the Fund's participation in the credit facility.

15. In the event an Interfund Loan is not paid according to its terms and the default is not cured within two business days from its maturity or from the time the lending Fund makes a demand for payment under the provisions of the Interfund Lending Agreement, Price will promptly refer the loan for arbitration to an independent arbitrator selected by the Directors of the Funds involved in the loan who will serve as arbitrator of disputes concerning Interfund Loans.[5] The arbitrator will resolve any problem promptly, and the arbitrator's decision will be binding on both Funds. The arbitrator will submit, at least annually, a written report to the Trustees setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute.

16. Each Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transaction under the credit facility occurred, the first two years in an easily accessible place, written records of all such transactions setting forth a description of the terms of the transaction, including the amount, the maturity, and the rate of interest on the loan, the rate of interest available at the time on short-term repurchase agreements and bank borrowings, and such other information presented to the Fund's Directors in connection with the review required by conditions 13 and 14.

17. Price will prepare and submit to the Directors for review an initial report describing the operations of the credit facility and the procedures to be implemented to ensure that all Funds are treated fairly. After commencement of operations of the credit facility, Price will report on the operations of the credit facility at the Directors' quarterly meetings.

In addition, for two years following the commencement of the credit facility, the independent public accountant for each Fund that is a registered investment company shall prepare an annual report that evaluates Price's assertion that it has established procedures reasonably designed to achieve compliance with the conditions of the order. The report shall be prepared in accordance with the Statements on Standards for Attestation Engagements No. 3 and it shall be filed pursuant to Item 77Q3 of Form N–SAR. In particular, the report shall address procedures designed to achieve the following objectives: (a) that the Interfund Rate will be higher than the Repo Rate, and if applicable the yield of the Reserve Investment Funds, but lower than the Bank Loan Rate; (b) compliance with the collateral requirements as set forth in the application; (c) compliance with the percentage limitations on interfund borrowing and lending; (d) allocation of interfund borrowing and lending demand in an equitable manner and in accordance with procedures established by the Directors; and (e) that the interest rate on any Interfund Loan does not exceed the interest rate on any third party borrowings of a borrowing Fund at the time of the Interfund Loan.

After the final report is filed, the Fund's external auditors, in connection with their Fund audit examinations, will continue to review the operation of the credit facility for compliance with the conditions of the application and their review will form the basis, in part, of the auditor's report on internal accounting controls in Form N–SAR.

18. No Fund will participate in the credit facility upon receipt of requisite regulatory approval unless it has fully disclosed in its SAI all material facts about its intended participation.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–30893 Filed 11–18–98; 8:45 am]

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[5] If the dispute involves Funds with separate Boards of Directors, the Directors of each Fund will select an independent arbitrator that is satisfactory to each Fund.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40662; File Nos. SR–AMEX–98–21; SR–CBOE–98–29; SR–PCX–98–31; and SR–PHLX–98–26]

Self-Regulatory Organizations; American Stock Exchange, Inc., Chicago Board Options Exchange, Inc., Pacific Exchange, Inc. and Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendments Thereto Relating to Expansion and Permanent Approval of the 2½ Point Strike Price Pilot Program

November 12, 1998.

I. Introduction

On June 17, 1998, the American Stock Exchange, Inc. (''AMEX''); on June 30, 1998, the Chicago Board Options Exchange, Inc. (''CBOE''); on June 19, 1998, the Pacific Exchange, Inc. (''PCX''); and on July 1, 1998, the Philadelphia Stock Exchange, Inc. (''PHLX'') (referred to individually as ''Exchange'' and collectively as ''Exchanges'') submitted to the Securities and Exchange Commission (''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 extend and subsequently expand and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

permanently approve the 2½ Point Strike Price Pilot Program.

The AMEX submitted to the Commission Amendment No. 1 to its proposed rule change on July 13, 1998.[3] The CBOE submitted to the Commission Amendment No. 1 to its proposal on July 15, 1998.[4] The PCX submitted to the Commission Amendment No. 1 to its proposed rule change on July 7, 1998,[5] and Amendment No. 2 to its proposal on July 10, 1998.[6] The PHLX submitted to the Commission Amendment No. 1 to its proposed rule change on July 2, 1998,[7] and Amendment No. 2 to its proposal on July 8, 1998.[8]

On July 24, 1998, the proposed rule change and amendments were published for comment in the **Federal Register**[9] and the Commission granted accelerated approval to the portion of the proposal relating to the extension of the 2½ Point Strike Price Pilot Program for a six-month period ending on January 15, 1999, or until the Commission approves the request to expand the program and approve it permanently, whichever occurs first. The Commission received no comments on the proposal. This order approves the portions of the proposed rule change, as amended, relating to the expansion and permanent approval of the 2½ Point Strike Price Pilot Program.

II. Description of the Proposal

The 2½ Point Strike Price Pilot Program enables the Exchanges to each list a specified number of options trading at a strike price greater than $25 but less than $50 at 2½ point intervals. The Commission approved the original 2½ Point Strike Price Pilot Program proposed by the Exchanges and the New York Stock Exchange (''NYSE''), which is no longer a participant in the program, on July 19, 1995.[10] Pursuant to the original pilot program, the Exchanges, including the NYSE, were permitted to use 2½ point strike price intervals for a joint total of up to 100 option issues. Currently, each participating Exchange is allocated a whole number of classes based on the sum of the following: (1) one quarter of the first 50 issues; and (2) a percentage of the remaining 50 classes determined by each Exchange's *pro rata* share of the total number of equity option listings as of July 1, 1997.[11] In addition, the options originally selected by the NYSE, which have not been subsequently decertified or delisted, continue to be eligible for the pilot program, but are not counted against any Exchange's allotment. However, these classes may not be replaced by another selection in the event a class becomes ineligible or is decertified.

Because the program is limited to 100 option classes industry-wide and because each Exchange is allocated a specific number of option classes, some of the Exchanges have had to refuse requests to add option classes to the program. As a result, the Exchanges are proposing to expand the program from 100 to 200 eligible option classes. Generally, to provide for the orderly introduction of the new classes and insure that the Exchanges' systems capacity remains sufficient throughout the expansion, the Exchanges propose to add only 20 classes each calendar quarter for the 5 quarters following the Commission's grant of permanent approval of the program. Overall, each Exchange will be allocated a whole number of additional option classes based on the sum of the following: (1) one quarter of the first 50 issues; and (2) a percentage of the remaining 50 classes determined by each Exchange's *pro rata* share of the total number of equity option listings as of October 1, 1998.[12] Each Exchange will receive its allocation of additional option classes over the 5 quarters following the Commission's grant of permanent approval of the program. In addition, the options originally selected by the NYSE, which have not been subsequently decertified or delisted, will continue to be eligible for the program, but are not counted against any Exchange's allotment.

The Exchanges also are proposing to make the 2½ Point Strike Price Pilot Program permanent based on the success of the pilot program over a three-year period. The Exchanges and the Options Price Reporting Authority (''OPRA'') represent that sufficient computer capacity is available to accommodate the proposed expansion and permanent approval of the 2½ Point Strike Price Pilot Program.[13]

III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, relating to the expansion and permanent approval of the 2½ Point Strike Price Pilot Program is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[14] Specifically, the Commission believes that the proposal is consistent with the requirements of Section 6(b)(5) of the Act[15] in that the expansion and permanent approval of the program should remove impediments to and perfect the mechanism of a free and open market in a manner consistent with the protection of investors and the public interest.

The Commission believes that expanding the 2½ Point Strike Price Pilot Program by 100 option classes will provide investors with greater flexibility to tailor their positions in equity options with a strike price greater than $25 but less than $50. The Commission also believes that the proposed addition of 100 option classes to the program strikes a reasonable balance between the Exchange's desire to accommodate market participants by offering a wide array of investment opportunities and

[3] *See* Letter from Scott G. Van Hatten, Legal Counsel, AMEX, to Richard Strasser, Assistant Director, Division of Market Regulation (''Division''), Commission, dated July 10, 1998 (''AMEX Amendment No. 1'').

[4] *See* Letter from Timothy H. Thompson, Director—Regulatory Affairs, CBOE, to Deborah Flynn, Attorney, Division, Commission, dated July 14, 1998 (''CBOE Amendment No. 1'').

[5] *See* Letter from Robert P. Pacileo, Staff Attorney, PCX, to Deborah L. Flynn, Attorney, Division, Commission, dated July 2, 1998 (''PCX Amendment No. 1'').

[6] *See* Letter from Robert P. Pacileo, Staff Attorney, PCX, to Deborah L. Flynn, Attorney, Division, Commission, dated July 8, 1998 (''PCX Amendment No. 2'').

[7] *See* Letter from Linda S. Christie, Counsel, PHLX, to Michael Walinskas, Deputy Associate Director, Division, Commission, dated July 1, 1998 (''PHLX Amendment No. 1'').

[8] *See* Letter from Linda S. Christie, Counsel, PHLX, to Michael Walinskas, Deputy Associate Director, Division, Commission, dated July 7, 1998 (''PHLX Amendment No. 2'').

[9] Securities Exchange Act Release No. 40226 (July 17, 1998) 63 FR 39916.

[10] *See* Securities Exchange Act Release No. 35993, 60 FR 38073 (July 25, 1995) (order approving File Nos. SR–PHLX–95–08; SR–AMEX–95–12; SR–PSE–95–07; SR–CBOE–95–19, and SR–NYSE–95–12).

[11] The actual allotment of options issues for each Exchange as of July 1997 is: CBOE (31), AMEX (25), PHLX (23), and PCX (21). However, each Exchange may trade at 2½ point strike price intervals any multiply listed option selected by another Exchange for inclusion in the 2½ Point Strike Price Pilot Program.

[12] Each Exchange will receive the following allocation of the additional 100 option classes: AMEX (26), CBOE (29), PCX (22) and PHLX (23). The total allotment of options issues for each Exchange as of October 1, 1999, will be as follows: AMEX (51), CBOE (60), PCX (43), and PHLX (46). *See* Letters from Timothy Thompson, Director—Regulatory Affairs, CBOE, to Richard Strasser, Assistant Director, Division, Commission, dated November 5, 1998; Scott G. Van Hatten, Legal Counsel, AMEX, to Richard Strasser, Assistant Director, Division, Commission, dated November 4, 1998. Telephone conversations between Nandita Yagnik, Attorney, PHLX; Robert Pacileo, Attorney, PCX; and Terri Evans, Attorney, Division, Commission, on November 10, 1998.

[13] *See* AMEX 19b–4 filing, AMEX–98–21, and Amendment No. 1, *supra* note 3; CBOE 19b–4 filing, CBOE–98–29; PCX Amendment No. 1, *supra* note 5; and PHLX 19b–4 filing, PHLX–98–26.

[14] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f(b)(5).

the need to avoid unnecessary proliferation of options series.

In addition, the Commission believes that permanent approval of the pilot program is now appropriate given the length of time the pilot program has been in place and its past success. The Commission notes that the Exchanges have not reported any significant problems with the pilot program since its inception nor has the Commission received adverse comments concerning the operation of the pilot program. The Commission notes that the Exchanges and OPRA have represented that sufficient computer processing capacity is available to accommodate the expansion and permanent approval of the 2½ Point Strike Price Pilot Program. The Commission expects the Exchanges to continue to monitor the applicable options activity closely to detect any proliferation of illiquid options series resulting from the narrower strike price intervals and any capacity problems. Further, the Commission expects the Exchanges to promptly remedy such problems should they arise.

In the event the Exchanges propose to expand the program beyond the 200 option classes currently proposed or eliminate the price limits for the 2½ point strike price intervals, the Exchanges must submit a report to the Commission as well as an Exchange Act Rule 19b–4 filing of such proposal. The report should cover the one-year period prior to the date of the proposal and should include data and written analysis on the open interest and trading volume in affected series, and delisted options series (for all strike price intervals) on the selected program option classes. The report also should discuss any capacity problems that may have arisen and any other data relevant to the analysis of the program, including an assessment of the appropriateness of the 2½ point strike price intervals for the options selected by the reporting exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (File Nos. SR–AMEX–98–21; SR–CBOE–98–29; SR–PCX–98–31; and SR–PHLX–98–26), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40655; File No. SR–CHX–97–19]

Self-Regulatory Organizations; Chicago Stock Exchange, Incorporated; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1 and 2 to Proposed Rule Change Establishing Rules Relating to Market-at-the-Close Orders

November 10, 1998.

I. Introduction

On September 12, 1997, the Chicago Stock Exchange, Incorporated (''Exchange'' or ''CHX'') filed with the Securities and Exchange Commission (''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 establish rules and procedures governing market-at-the-close (''MOC'') orders.

The proposed rule change was published for comment in Securities Exchange Act Release No. 39252 (Oct. 17, 1997), 62 FR 55444 (Oct. 24, 1997). The Commission did not receive any comments on the proposal. The Exchange filed with the Commission Amendment No. 1 to the proposed rule change on November 3, 1997,[3] and Amendment No. 2 on September 29, 1998.[4] This order approves the proposed rule change including, on an accelerated basis, Amendment Nos. 1 and 2.

II. Description of the Proposal

The Exchange does not currently maintain formal rules governing the entry or execution of MOC orders on the Exchange.[5] The Exchange therefore seeks to adopt Article XX, Exchange Rule 44, ''Market-at-the-Close Orders,'' to establish formal procedures and better define the rights and obligations of Exchange members and customers with respect to MOC orders. As defined in the proposed rule change, the term ''MOC order'' means a market order which is to be executed in its entirety at the closing price on the primary market of the stock named in the order, and if not so executed, is to be treated as canceled.[6]

The Exchange proposes to adopt procedures that mirror those used by the New York Stock Exchange (''NYSE'') and the American Stock Exchange (''Amex''). The similarity is intended to ensure that MOC orders sent to the Exchange will receive treatment comparable to MOC orders sent to the NYSE and the Amex. The Exchange has expressed concern that unless its MOC rules are functionally equivalent to those of the NYSE and the Amex, market participants may attempt to execute certain MOC orders on the Exchange that would otherwise be prohibited under the MOC rules of the NYSE and the Amex.

In its original form, the Exchange's proposal contemplated procedures and requirements for MOC orders entered on expiration days (*i.e.*, last trading day before monthly expiration of standardized contracts in derivative products and last trading day before expiration of quarterly index options) that differed from those for MOC orders entered on nonexpiration days. Amendment No. 2 eliminates the disparity and proposes a uniform version of the Exchange's MOC rules that would apply to all MOC orders irrespective of the date of entry.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 revised the proposed rule change by redefining a term used in the rule text. *See* Letter from Charles R. Haywood, Foley & Lardner, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated October 31, 1997 (''Amendment No. 1'').

[4] Amendment No. 2 eliminates the proposed requirements that the Exchange publish an independent list of MOC order imbalances that occur on the Exchange. In addition, Amendment No. 2 revises the proposal to establish identical procedures for MOC orders entered on expiration and non-expiration days. Finally, Amendment No. 2 provides that MOC orders may be entered on the Exchange after 2:40 P.M., Central Standard Time, only if the specialist determines that such MOC order could have been entered on the primary market. *See* Letter from David T. Rusoff, Foley & Lardner, to Michael Loftus, Attorney, Division of Market Regulation, Commission, dated September 28, 1998 (''Amendment No. 2'').

[5] However, the Exchange does not prohibit the use of MOC orders. Generally, an Exchange specialist will voluntarily accept an MOC order if the specialist believes such order could be accepted on the New York Stock Exchange. Telephone conversation between David T. Rusoff, Attorney, Foley and Lardner; Daniel J. Liberti, Attorney, Exchange; and Michael L. Loftus, Attorney, Division of Market Regulation, Commission (October 16, 1997).

[6] The Exchange's proposed MOC rule and procedures would apply to all securities listed on the Exchange (whether by exclusive listing or dual listing) and all securities traded on the Exchange pursuant to unlisted trading privileges. Electronic mail message from David T. Tusoff, Attorney, Foley and Lardner, to Michael L. Loftus, Attorney, Division of Market Regulation, Commission (November 9, 1998).

Under the amended proposal, no MOC order may be entered after 2:40 P.M., Central Standard Time, in any stock. Floor brokers representing MOC orders must indicate their irrevocable MOC interest to the specialist by 2:40 P.M. After 2:40 P.M., MOC orders may generally be entered only if the specialist determines that such MOC order could have been entered on the primary market. In order for specialists to determine whether MOC orders could have been entered on the primary market, specialist must monitor the publication of MOC order imbalances on the primary market through third-party vendors. If a specialist accepts an MOC order after 2:40 P.M., the specialist is required to document evidence that such MOC order could have been entered on the primary market.

Notwithstanding the above, the proposal prohibits the use of MOC orders entered after 2:40 P.M. for the liquidation of positions relating to a strategy involving any stock index options. The proposal further provides that no MOC order in any stock may be canceled or reduced in size after 2:40 P.M. Cancellations to correct a legitimate error, however, will continue to be permitted after 2:40 P.M.

An Exchange specialist only will be obligated to accept and guarantee execution of those MOC orders that are of a size and type that a specialist would otherwise be required to accept and guarantee execution of, if the orders did not have an MOC designation.[7]

The proposed rule change specifies the manner in which an Exchange specialist is required to executive MOC orders. When there is an imbalance between the buy and sell MOC orders on the Exchange, the specialist shall, at the close of the Primary Trading Sessions[8] on that day, execute the imbalance for its own account at the closing price on the primary market of the stock. The specialist shall then stop the remaining buy and sell MOC orders against each other and pair them off at the closing price on the primary market of the stock. The ''pair off'' transaction shall be reported to the consolidated last sale reporting system as ''stopped stock.'' Where the aggregate size of the buy MOC orders on the Exchange equals the aggregate size of the sell MOC orders on the Exchange, the buy and sell MOC orders shall be stopped against each other and paired off at the closing price on the primary market of the stock. The transaction shall be reported to the consolidated last sale reporting system as ''stopped stock.''

Finally, the proposed rule change would include Interpretations and Policies, Section .01, ''G Orders,'' as part of the new Exchange Rule 44. Under the provision, proprietary orders represented pursuant to Section 11(a)(1)(G) of the Act[9] (''G Orders'') must be announced as such[10] and yield priority, parity, and precedence to any order which is for the account of a person who is not a member, member organization, or associated person thereof. Market orders to sell short at-the-close represented as G Orders must yield priority, parity, and precedence to limit orders not represented pursuant to Section 11(a)(1)(G) of the Act. For example, in executing paired-off MOC orders, a G Order to sell short at-the-market would yield to sell orders limited at the closing price that are not represented as G Orders. This will be the policy even if the G Order to sell short at-the-market theoretically could have been executed at a better price (and still satisfy the short sale rule in terms of a ''plus'' or ''zero plus'' tick) had their not been a pair-off on the transaction. This would not be applicable if the order was a market order to sell ''long'' or a market order to buy.

III. Discussion

For the reasons discussed below, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[11] Specifically, the Commission believes the proposed rule change is consistent with the Section 6(b)(5) requirements that the rules of an exchange market be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[12]

MOC procedures were first developed for expiration days because many trading strategies that involve stock index derivatives require the unwinding of positions in the component stocks at the closing price on expiration days. The Commission recognizes, however, that institutional investors have developed an increasing number of composite-asset trading techniques and strategies that call for a single closing price on a daily basis, not just expiration days. As a result, there is a demonstrated interest in establishing greater price certainty at the close of trading each day.

Moreover, the national securities exchanges and broker-dealers have developed products to facilitate the trading of portfolios of securities. The Exchange's proposal represents an effort to accommodate the increased use of index-related trading by customers and member firms, and provide additional flexibility in order execution. The proposal also constitutes an attempt to minimize the excess market volatility that may emanate from the liquidation of stock positions related to trading strategies involving index derivative products. The Commission believes, based in part on the experience of other exchange markets, that MOC procedures may help reduce market volatility and may result in more orderly markets at the close of trading, especially on expiration days.

The proposal requires market participants to enter their MOC orders by 2:40 P.M., Central Standard Time, every trading day. In addition, floor brokers representing MOC orders must indicate their irrevocable MOC interest to the specialist by 2:40 P.M. every trading day. No MOC order in any stock may be canceled or reduced in size after 2:40 P.M. The Commission believes the 2:40 P.M. deadline for the entry of MOC orders on all trading days will allow Exchange specialists to make timely and reliable assessments of MOC order flow and evaluate the potential impact on closing prices. The Commission notes that because the MOC orders will be irrevocable, and because of other restrictions on MOC order entry after

[7] The execution parameters governing the Exchange's Guaranteed Execution System (''BEST System'') require a specialist to accept and guarantee execution on all agency orders in Dual Trading System Issues from 100 up to and including 2,099 shares. Therefore, an Exchange specialist likewise would be required to accept and guarantee execution of an MOC order from 100 up to and including 2,099 shares. *See* Article XX, Exchange Rule 37(a)(1).

[8] The term ''Primary Trading Session'' is defined in Article IX, Exchange Rule 10(b), as being (i) the same hours the security is traded on its primary market, if the Exchange is not the primary market for such security (however, no later than 3:00 P.M. Central Standard Time for a security primarily listed on the Pacific Exchange), or (ii) from 8:30 A.M. to 3:00 P.M., Central Standard Time, Monday through Friday, if the Exchange is the primary market for such security.

[9] 15 U.S.C. 78k(a)(1)(G).

[10] In addition, the Exchange currently requires that orders to be executed pursuant to Section 11(a)(1)(G) of the Act and Rule 11a1–1(T) must bear an identifying notation that will enable the executing member to disclose to other members that the order is subject to such provisions. *See* Article XX, Exchange Rule 24, ''Record of Orders,'' Interpretations and Policies, .01.

[11] 15 U.S.C. 78f(b).

[12] In approving the proposed rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

2:40 P.M., MOC orders entered should reflect actual investor interest. In addition, because the MOC order entry deadline is twenty minutes in advance of the closing, the procedures should ameliorate the problem of significant shifts in MOC imbalances near the close of trading. The Commission therefore believes the 2:40 P.M. deadline for the entry of MOC orders should help effectuate more orderly closings on a daily basis and assist Exchange specialists in obtaining an accurate view of the buying and selling in MOC orders.

The Exchange's proposal states that no MOC order may be entered on the Exchange after 2:40 P.M. in any stock unless the specialist determines that such MOC order could have been entered on the primary market (*i.e.*, the NYSE or the Amex). Therefore, the MOC rules and procedures of the primary market will control a specialist's determination of whether an MOC order could be entered on the primary market. Consistent with the MOC rules and procedures of the primary markets, an MOC order generally may be entered on the Exchange after 2:40 P.M., if the primary market has disseminated notice of an MOC order imbalance for that particular stock, and the MOC order to be entered on the Exchange would serve to offset that disseminated MOC order imbalance (*e.g.*, the MOC order to be entered is on the contra-side of the imbalance).

Specifically, as soon as practicable after 3:40 P.M., Eastern Standard Time (2:40 P.M., Central Standard Time), every trading day, the NYSE (a ''primary market'') disseminates notice of MOC order imbalances of 50,000 shares or more in all NYSE-listed stocks.[13] The NYSE also disseminates MOC order imbalances of less than 50,000 shares if permission is obtained from an NYSE Floor Official,[14] or if the underlying stock was the subject of an informational imbalance dissemination made between 3:00 and 3:40 P.M., Eastern Standard Time.[15] It should be noted that the MOC order imbalances disseminated by the NYSE include ''marketable'' limit-at-the-close (''LOC'') orders.[16] The NYSE also requires that an additional dissemination be made at 3:50 P.M., Eastern Standard Time, for any stock which was the subject of an imbalance dissemination at 3:40 P.M. Specifically, if at 3:50 P.M. the MOC order imbalance remains 50,000 shares or more, the 3:50 P.M. update must include the size and side of the imbalance.[17] If at 3:50 P.M. the MOC order imbalance is less than 50,000 shares, the 3:50 P.M. update must include a ''no imbalance'' message, or alternatively the size and side of the imbalance may be disseminated with Floor Official approval.

In addition, as soon as practicable after 3:40 P.M., Eastern Standard Time (2:40 P.M., Central Standard Time), every trading day, the Amex (a ''primary market'') disseminates notice of MOC order imbalances of 25,000 shares or more in all Amex-listed stocks, other than those that trade in units of less than 100 shares.[18] In certain instances, the Amex permits the dissemination of MOC order imbalances of less than 25,000 shares if permission is obtained from an Amex Floor Official.[19] Unlike the MOC procedures of the NYSE, the MOC order imbalances disseminated by the Amex do not include marketable LOC orders, and the Amex does not disseminate a supplementary update at 3:50 P.M.

To determine whether MOC orders may be entered on the primary market, the proposal requires specialists to monitor the publication of MOC order imbalances on the primary market through third-party vendors. For example, if through Bloomberg the NYSE disseminated notice of an MOC order imbalance of 100,000 shares for stock XYZ on the buy side, the Exchange specialist in stock XYZ could accept MOC orders on the sell side after 2:40 P.M., provided the MOC orders were for less than 100,000 shares. The Commission believes it is reasonable for the Exchange to require its specialists to monitor MOC order imbalances through third party vendors (*e.g.*, Bloomberg, Dow Jones, Reuters). An Exchange specialist may accept MOC orders on the contra-side of a disseminated MOC order imbalance only during a narrow period of time. Therefore, it is critical that Exchange specialists be immediately informed whether a particular stock is the subject of an MOC order imbalance. The Commission believes the proposal will ensure that Exchange specialists stay abreast of MOC order imbalances in a timely manner and accept MOC orders in conformance with the Exchange's rules. Furthermore, if an Exchange specialist does accept an MOC order after 2:40 P.M., the specialist must document evidence indicating that such MOC order could have been entered on the primary market.

While the Commission believes it is reasonable for the Exchange to restrict the entry of MOC orders after 2:40 P.M., the Commission also believes the Exchange's proposal makes adequate provision for the entry of certain corrective orders after the 2:40 P.M., deadline. In particular, the proposal allows specialists to accept the cancellation of an MOC order after 2:40 P.M. if the cancellation was done to correct a legitimate error. The Commission believes this measure will provide market participants with the flexibility necessary to rectify bona fide errors involving MOC orders.

The Commission also believes it is reasonable for the Exchange to prohibit the use of MOC orders entered after 2:40 P.M. for the liquidation of positions relating to a strategy involving any stock index options. The proposal restricts the entry of MOC orders after 2:40 P.M. to instances where there is an MOC order imbalance on the primary market. This restriction will help to ensure that the 2:40 P.M. deadline is concrete and enforceable and that only a limited class of orders will be excepted from the deadline. The Commission believes the Exchange has properly excluded from the excepted class any MOC order that relates to a strategy involving index options. The Commission notes that MOC procedures are principally

[13] *See* NYSE Rule 116, Supplementary Material .40, ''`Stopping' stock on market-at-the-close orders.'' NYSE Information Memo No. 98–20 (June 22, 1998) also provides information pertaining to MOC orders entered on the NYSE. The Commission recently approved revisions to the NYSE procedures that govern MOC orders. *See* Securities Exchange Act Release No. 40094 (June 15, 1998), 63 FR 33975 (June 22, 1998).

[14] This provision permits, but does not require, the publication of an MOC order imbalance which, although less than 50,000 shares, may be significantly greater than average daily volume in a particular stock.

[15] Between 3:00 and 3:40 P.M., imbalances of any size may be disseminated with Floor Official approval. These disseminations are informational only and do not limit MOC order entry before 3:40 P.M.

[16] This means that LOC orders to buy at a higher price than the last sale price would be included with the buy MOC orders, and LOC orders to sell at a lower price than the last sale price would be included with the sell MOC orders. LOC orders with a limit equal to the last sale price would not be included in the disseminated imbalance. LOC orders are entered for execution at the closing price, provided the closing price is at or within the limit specified.

[17] If the 3:50 P.M. imbalance dissemination reverses the 3:40 P.M. imbalance dissemination (*i.e.*, MOC order imbalance switches from buy side to sell side, and vice versa), only MOC orders which offset the 3:50 P.M. imbalance would be permitted to be entered thereafter.

[18] *See* Amex Rule 109, ''`Stopping' Stock.'' The Commission approved amendments to the Amex rules and procedures governing MOC orders on June 24, 1998. *See* Securities Exchange Act Release No. 40123 (June 24, 1998), 63 FR 36280 (July 2, 1998).

[19] The Amex permits the dissemination of MOC order imbalances of less than 25,000 shares if the specialist (i) anticipates that the execution price of the MOC orders on the book will exceed the price change parameters of Amex Rule 154, Commentary .08, or (ii) believes that an order imbalance should otherwise be planned.

intended to reduce volatility at the close. The Commission believes the ban on the use of index options-related MOC orders after 2:40 P.M. will serve to reduce volatility at the close and in doing so will create greater price certainty.

The Commission believes it is appropriate for the Exchange to require all proprietary MOC orders that are represented pursuant to Section 11(a)(1)(G) of the Act,[20] including market orders to sell short at-the-close, to yield priority, parity, and precedence to any non-member MOC order. This requirement is consistent with Section 11(a) of the Act [21] in that it will help ensure the primacy of non-member MOC orders. Furthermore, because G Orders must be marked to indicate their status and must be disclosed to the Exchange's trading floor, the Commission is confident that Exchange specialists will execute members' proprietary MOC orders in accordance with the priority principles set forth in Section 11(a) of the Act and the rules thereunder.

As previously mentioned, Amendment No. 2 eliminates the requirement that the Exchange independently publish MOC order imbalances that occur on the Exchange. The Commission believes this revision is appropriate for several reasons. First, the public dissemination of multiple MOC order imbalances for the same stock by the primary market and the Exchange could prove confusing. Next, the modification remedies the anomalous situation that might arise if the Exchange's MOC order imbalance for a particular stock differed from the primary market's MOC order imbalance, and MOC orders could have been accepted on the Exchange after 2:40 P.M. but not the primary market, and vice versa. Finally, the Exchange has represented that a substantial MOC order imbalance (*i.e.*, 50,000 shares or more) has never occurred on the Exchange. Furthermore, because Exchange specialists only are obligated to accept and guarantee execution of relatively small MOC orders (100–2,099 shares), the specialist may decline to accept and guarantee execution of large MOC orders that would cause a substantial MOC order imbalance. The Commission believes that in the aggregate, these factors outweigh the benefits of publicly disseminating MOC order imbalances.[22]

The Exchange's proposal is substantially similar to the MOC rules currently in place at the NYSE,[23] the Amex,[24] and the Boston Stock Exchange (''BSE'').[25] The similarity between the proposal and the MOC rules maintained by other national securities exchange will ensure that the Exchange does not become a haven for MOC orders that are prohibited on the other exchange markets. In addition, the standardization of rules will result in Exchange MOC orders being treated the same as MOC orders sent to the NYSE, Amex, and BSE.

The Commission understands that in the highly competitive markets of today, it is possible that a regional exchange which trades NYSE- and Amex-listed stocks, but does not have comparable closing procedures, could be utilized by market participants to enter MOC orders prohibited on such primary markets. Although the Commission has no reason to believe that the Exchange has become a significant alternative market to enter otherwise prohibited MOC orders, the Commission agrees with the Exchange that if this possibility were realized, it could have a negative impact on the fairness and orderliness of the national market system. Accordingly, the Commission believes that it is reasonable for the Exchange to adopt procedures for the handling of MOC orders that mirror those of the NYSE, Amex, and BSE. The adoption of consistent rules and procedures will help ensure the equal treatment of MOC orders among exchange markets and, in the event of unusual market conditions, offer the Exchange the same benefits in terms of potentially reducing volatility.

The Commission notes that prior to receiving parmanent approval for their MOC rules, the NYSE, Amex, and the BSE were required to first implement their MOC rules on a pilot basis. However, in consideration of the demonstrated benefits of MOC rules and procedures, the Commission believes there is no compelling reason to approve the Exchange's proposal on a pilot basis rather than permanently. The Commission also is confident that the Exchange will surveil the closing procedures to ensure against potential manipulations of the close through MOC transactions.

Finally, the Commission believes the structure of proposed Exchange Rule 44 will enable members and other market participants to locate and apply the Exchange's MOC guidelines without difficulty. Some exchange markets maintain their MOC rules and procedures in several sources, including rule books and informational memos to members. In contrast to such a decentralized approach, the Exchange's proposal presents all relevant information in one comprehensive rule. Furthermore, because the MOC procedures for expiration days are the same as those for non-expiration days, Exchange members and member organizations will follow identical procedures at the close on all trading days.

The Commission finds good cause for approving proposed Amendment Nos. 1 and 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.** Amendment No. 1 revised the proposed rule change by redefining a term used in the rule text. The modification was intended to ensure that the proposed rule change remained consistent with current exchange market practice and did not include incorrect and obsolete terminology. The Commission notes that the modification proposed by Amendment No. 1 has been superseded by the revisions proposed by Amendment No. 2 and that the approval of Amendment No. 1 therefore will have no import on the proposed rule change.

Amendment No. 2 modifies the proposed rule change by eliminating the requirement that the Exchange independently publish MOC order imbalances that occur on the Exchange. Instead, the Exchange will rely on the primary market's dissemination of MOC order imbalances. Amendment No. 2 also specifies that Exchange specialists may accept MOC orders after 2:40 P.M. only if such orders could have been entered on the primary market. As a result, Amendment No. 2 addresses the anomalous situation that might arise if the Exchange's MOC order imbalance differed from the primary market's MOC order imbalance, and MOC orders could have been accepted on the Exchange after 2:40 P.M. but not the primary market, and vice versa. The Commission believes Amendment No. 2 makes the proposal consistent with the Exchange's goal of establishing MOC procedures that are uniform with those of the primary markets. Furthermore, the use

[20] 15 U.S.C. 78k(a)(1)(G).

[21] 15 U.S.C. 78k(a).

[22] The Commission previously has indicated its view that the dissemination of MOC order imbalances allows specialists to determine the buying and selling interest in MOC orders and, if there is a substantial imbalance on one side of the market, provides the investing public with timely and reliable notice of the imbalance and with an opportunity to make appropriate investment decisions in response. *See e.g.*, Securities Exchange Act Release No. 40123 (June 24, 1998), 63 FR 36280 (July 2, 1998).

[23] *See supra* note 13.

[24] *See supra* note 18.

[25] *See* BSE Rules of Board, Chapter II, Section 22, ''Procedures for Handling Market-On-Close (''MOC'') Orders.'' The Commission permanently approved the BSE's rules and procedures governing MOC orders on October 9, 1998. *See* Securities Exchange Act Release No. 40538 (Oct. 9, 1998), 63 FR 55661 (Oct. 16, 1998).

of the primary market's MOC order imbalance will simplify MOC procedures for market participants and specialists, and will eliminate possible mix-ups that might have occurred due to the dissemination of multiple MOC order imbalances for the same securities. Finally Amendment No. 2 revises the proposal to establish identical procedures for MOC orders entered on expiration and non-expiration days. The Commission believes the adoption of uniform MOC procedures that do not vary from day-to-day will create certainty among market participants and will eliminate the confusion that may have arisen from procedural requirements that differed for expiration and non-expiration days. Accordingly, the Commission believes there is good cause, consistent with Sections 6(b)(5) and 19(b) of the Act,[26] to approve Amendment Nos. 1 and 2 to the proposed rule change on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 1 and 2 to the proposed rule change, including whether the proposed rule change, as modified by Amendment Nos. 1 and 2, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–97–19 and should be submitted by December 21, 1998.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[27] that the proposed rule change (SR–CHX–97–19), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

Margaret H. McFarland,

Deputy Secretary.

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[26] 15 U.S.C. 78f(b)(5) and 15 U.S.C. 78s(b).

[27] 15 U.S.C. 78s(b)(2).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40676; File No. SR–NASD–98–81]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Application of the Corporate Financing Rule to Certain Offerings by Charitable Organizations

November 12, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 29, 1998, NASD Regulation, Inc. (''NASD Regulation'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a 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 amend Rule 2710 of the National Association of Securities Dealers, Inc. (''NASD'' of ''Association'') to exempt certain offerings by charitable organizations from the pre-offering review requirements of the Corporate Financing Rule. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

2710. Corporate Financing Rule—Underwriting Terms and Arrangements

(a) No change.

(b) Filing Requirements

(1)–(6) No change.

(7) Offerings Exempt from Filing

Notwithstanding the provisions of subparagraph (1) above, documents and information related to the following public offerings need not be filed with the Association for review, unless subject to the provisions of Rule 2720. However, it shall be deemed a violation of this Rule or Rule 2810, for a member to participate in any way in such public offerings if the underwriting or other arrangements in connection with the offering are not in compliance with this Rule or Rule 2810, as applicable:

(A)–(C) No change.

(D) securities offered pursuant to a redemption standby ''firm commitment'' underwriting arrangement registered with the Commission on Forms S–3, F–3 or F–10 (only with respect to Canadian issuers); [and]

(E) financing instrument-backed securities which are rated by a nationally recognized statistical rating organization in one of its four (4) highest generic rating categories*; and*

(F) offerings of securities by a church or other charitable institution that is exempt from SEC registration pursuant to Section 3(a)(4) of the Securities Act.

(8) No change.

(9) Offerings Required to be Filed

Documents and information relating to all other public offerings including, but not limited to, the following must be filed with the Association for review:

(A)–(E) No change.

(F) securities offered by a bank, savings and loan association, [church or other charitable institution,] or common carrier even though such offering may be exempt from registration with the Commission;

(G)–(H) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, The Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

When the Act was amended in the early 1980s to require that most SEC-registered broker/dealers be members of the NASD, the NASD regulated for the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

first time broker/dealers that assist churches and other non-profit charitable organizations that raise money through the issuance of securities. Certain church bond and similar offerings by religious and charitable organizations are exempt from SEC registration under Section 3(a)(4) of the Securities Act of 1933 (''Securities Act''),[3] but generally are subject to review by state regulatory authorities. NASD Rule 2710 (the ''Corporate Financing Rule'') subjects ''church bond'' offerings to a filing requirement with the Corporate Financing Department of NASD Regulation (''Department'') so that the Department has an opportunity to determine whether compensation terms and arrangements are fair and reasonable for purposes of the rule.

Department staff have found that the aggregate underwriting compensation received by church bond broker/dealers has been significantly below the maximum amount of underwriting compensation that is permitted under Rule 2710. Although initially there was an issue in some cases of appropriate compliance with SEC Rule 15c2–4,[4] the staff has not recently identified any problems in this area.

In order to more appropriately focus the review efforts of Department staff on the types of offerings that present significant regulatory issues, NASD Regulation proposes to amend the Corporate Financing Rule to exempt certain church bond offerings from the filing requirements, but not the substantive requirements, of the Corporate Financing Rule. NASD Regulation proposes to implement the proposed rule change on the date of SEC approval.

(b) Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6)[5] of the Act, which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The elimination of the requirement in Rule 2710 to file certain church bond offerings will allow NASD Regulation to better allocate its Department staff resources.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Association consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Security and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–98–81 and should be submitted by December 10, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

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[3] 15 U.S.C. 77c(a)(4). The Commission notes that in order for the proposed exemption to apply the offering must qualify under Section 3(a)(4) of the Securities Act, which requires that the offering not be for pecuniary profit, and no part of the net earnings can inure to the benefit of any person, private stockholder, or individual.

[4] 17 CFR 240,15c2–4. Rule 15c2–4 under the Act requires that investor funds forwarded to a broker/dealer in a contingent offering be held in an escrow or special account, depending on whether the broker/dealer can carry customer funds or accounts, until the contingency is reached before the funds can be released to the issuer.

[5] 15 U.S.C. 78*o*–3(b)(6).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40679; File No. SR–NYSE–98–32]

November 13, 1998.

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Shareholder Approval of Stock Option Plans

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 13, 1998, the New York Stock Exchange, Inc. (the ''Exchange'' or the ''NYSE'') filed with the Securities and Exchange Commission (the ''Commission'' or the ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend Paragraphs 312.01, 312.03 and 312.04 of its Listed Company Manual (the ''Manual''). The proposed rule change amends the Exchange's shareholder approval policy (the ''Policy'') with respect to stock option and similar plans (''Plans''). The text of the proposed rule change is as follows:

Text of the Proposed Rule Change

Italics indicates additions; **[**brackets**]** indicate deletions.

312.00 Shareholder Approval Policy

312.01 Shareholders' interest and participation in corporate affairs has greatly increased. Management has responded by providing more extensive and frequent reports on matters of interest to investors. In addition, an increasing number of important corporate decisions are being referred to shareholders for their approval. This is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

especially true of transactions involving the issuance of additional securities.

Good business practice is frequently the controlling factor in the determination of management to submit a matter to shareholders for approval even though neither the law nor the company's charter makes such approvals necessary.The Exchange encourages this growth in corporate democracy. *For example, due to the recent growth of officer and director equity-based compensation arrangements and the increased interest of shareholders in this area, companies may determine to submit stock option and similar plans to shareholders for approval, whether or not the Exchange requires such approval.*

* * * * *

312.03 Shareholder approval is a prerequisite to listing in four situations: (a) Shareholder approval is required with respect to a stock option or purchase plan, or any other arrangement, pursuant to which officers or directors may acquire stock (collectively, a ''Plan'') except:

(1) for warrants or rights issued generally to security holders of the company;

(2) pursuant to a broadly-based Plan **[**that includes other employees (*e.g.* ESOPs)**]**;

(3) where options or shares are to be issued to a person not previously employed by the company, as a material inducement to such person's entering into an employment contract with the company; or

(4) pursuant to a Plan that provides that (i) no single officer or director may acquire under the Plan more than one percent of the shares of the issuer's common stock outstanding at the time the Plan is adopted, and (ii) together with all Plans of the issuer (other than Plans for which shareholder approval is not required under subsections (1) to (3) above), does not authorize the issuance of more than five percent of the issuer's common stock outstanding at the time the Plan is adopted.

* * * * *

312.04 For the purpose of Para. 312.03:

* * * * *

[(g) Whether a Plan is ''broadly-based'' depends on a variety of factors, including, but not limited to the number of officers, directors and other employees covered by the Plan and whether there are separate compensation arrangements for salaried employees and hourly employees. The Exchange will deem a Plan to be ''broadly-based'' if at least 20 percent of the company's employees are eligible to receive stock or options under the Plan and at least half of those eligible are neither officers nor directors (the ''20 percent test''). However, this is a non-exclusive safe harbor and the fact that a Plan does not meet the 20 percent test does not mean that the Exchange will consider the Plan to be narrowly-based. The Exchange encourages a listed company adopting a Plan that does not meet the 20 percent test, but that the company believes is ''broadly-based,'' to discuss the matter with the Exchange staff prior to filing a listing application covering the shares to be issued under the Plan.**]**

(g) ''Officer'' has the same meaning as defined by the Securities and Exchange Commission in Rule 16a–1(f) under the Securities Exchange Act of 1934, or any successor rule.

(h) A Plan is ''broadly-based'' if, pursuant to the terms of the Plan:

at least a majority of the company's full-time employees in the United States, who are ''exempt employees,'' as defined under Fair Labor Standards Act of 1938, are eligible to receive stock or options under the Plan; and

at least a majority of the shares of stock or shares of stock underlying options awarded under the Plan, during the shorter of the three-year period commencing on the date the Plan is adopted by the company or the term of the Plan, must be awarded to employees who are not officers or directors of the company.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in section 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

As a prerequisite to listing, the Policy requires shareholder approval of stock option or purchase plans or any other arrangement pursuant to which either officers or directors acquire stock. The Policy also contains, however, four exemptions from this requirement, including an exemption for ''broadly-based'' Plans. The purpose of the proposed rule change is to amend the provisions in the mutual governing shareholder approval of Plans, including the definition of what constitutes a ''broadly-based'' Plan.

The Exchange historically had not provided a definition of what constitutes a ''broadly-based'' Plan other than to state that such a Plan must include employees other than officers and directors. The one example in the policy of such a Plan was an employee stock option plan, or ''ESOP.'' In December of 1997, the Exchange filed a proposed rule change amending the Policy which was published for public comment[3] by the Commission as required under Section 19(b)(1) of the Act.[4] The Commission received no comments on the proposed rule change, which was subsequently approved on April 8, 1998.[5] Among other things, the Original Proposal codified existing Exchange interpretations regarding ''broadly-based'' plans. Specifically, that proposal stated that the definition of ''broadly-based'' required a review of a number of factors, including the number of persons included in the Plan, and the nature of the company's employees. The Exchange also codified a non-exclusive safe harbor for Plans in which at least 20 percent of a company's employees were eligible, provided that the majority of those eligible were neither officers nor directors.

Following the approval and effectiveness of the Original Proposal, the Exchange and the Commission received a significant number of inquiries and comments regarding the proposal. These originated primarily from the institutional investor community and focused on the definition of ''broadly-based.'' Many commentators were concerned that the Original Proposal could be a ''loop-hole'' pursuant to which companies could establish Plans of significant size that included officers and directors without the need for shareholder approval. Commentators also expressed general concern regarding the potential dilutive effects of Plans.

In response to the inquiries and comments, the Exchange issued a Request for Comment on the definition of ''broadly-based'' Plans. The Exchange received 166 comments in response to that request. These comments are discussed in Section II.C., below. The

[3] Exchange Act Release No. 39659 (February 12, 1998), 63 FR 9036 (February 23, 1998).

[4] 15 U.S.C. 78s(b)(1).

[5] Exchange Act Release No. 39839 (April 8, 1998), 63 FR 18481 (April 15, 1998) (the ''Original Proposal'').

Request for Comment indicated the Exchange's intention to establish a task force (the ''Task Force'') to review the comments and to make recommendations regarding potential changes to the definition of ''broadly-based'' Plan.

The Exchange thereafter established the Task Force to review the comments. The Task Force was composed of representatives of the Exchange's Legal Advisory Committee, Individual Investors Advisory Committee, Pension Managers Advisory Committee, and Listed Company Advisory Committee. In addition, members of the Task Force included representatives of other Exchange constituencies, including a representative from the Council of Institutional Investors. Following its deliberations, the Task Force recommended the following:

(1) Retain, but modify the definition of a ''broadly-based'' Plan. The new definition would classify a Plan as ''broadly-based'' if, pursuant to the terms of the Plan:

(a) At least a majority of the issuer's full-time, exempt U.S. employees [6] are eligible to participate under the plan; and

(b) At least a majority of the shares awarded under the Plan (or shares of stock underlying options awarded under the Plan) during the shorter of the three year period commencing on the date the Plan is adopted by the issuer, or the term of the Plan itself, are made to employees [7] who are not officers or directors of the issuer.[8]

(2) Establish the definition of a ''broadly-based'' Plan as an exclusive test, not a safe harbor.

(3) Revise the Exchange's general policy on shareholder approval issues to recognize the increased use of Plans as means to compensate officers and directors and state the Exchange's view that companies should consider submitting Plans to shareholder whether or not required by Exchange policy.

(4) Direct the Task Force or other appropriate group to immediately commence a study to establish a maximum overall dilution listing standard for all non-tax-qualified Plans that otherwise would be exempt from shareholder approval. The goal would be to complete this study in time for Exchange review prior to the year 2000 proxy statement season.

The rule amendments being proposed in this filing implement the first three Task Force recommendations. In addition, the Exchange has adopted the fourth recommendation and will direct the Task Force to consider a possible listing standard regarding a dilution test.

The Exchange believes that the Task Force's recommendations represent an effective and workable compromise regarding shareholder approval of Plans. The proposal blends tests based both on Plan eligibility and Plan awards. In addition, while providing certainty through the use of an exclusive test, the Exchange believes the proposed amendments also state a general Exchange policy recognizing the increased use of Plans by companies and the Exchange's view that companies should consider submitting Plans to shareholders, whether or not required under the Policy. The Exchange believes the amendments also provide consistency in coverage by adopting the Commission's definition of ''officer,'' as contained in Rule 16a–1(f) under the Act. Finally, the Task Force recognizes that this proposal may only be an interim step in addressing this issue, and recommends that the Exchange consider an overall dilution test. Since the Exchange did not request comment on this issue in its original Request for Comment, the Exchange believes that further study of such a test is prudent.

2. Statutory Basis

The NYSE believes that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [9] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

As discussed, the Exchange issued a Request for Comment on the definition of a ''broadly-based'' plan. The Exchange received 166 comment letters in response to that solicitation.[10] As a general matter, the listed company community favored retaining the current shareholder approval policy with respect to stock option plans. In contrast, the institutional investor community generally favored a narrower definition of what constitutes a ''broadly-based'' plan, and suggested that such a definition be an exclusive test, not a non-exclusive safe harbor. The Task Force considered these comments in proposing the compromise position the Exchange is proposing in this filing.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

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[6] *See* 29 U.S.C. 213(a) for the definition of ''exempt employees.''

[7] The Exchange proposes a two part test for determining whether a plan is broadly-based. In the first prong, a majority of the company's full-time employees who are ''exempt employees'' must be eligible to receive stock. As a general matter, ''exempt employees'' are salaried employees in an executive, administrative or professional capacity. The Task Force recommended limiting this prong of the definition to ''exempt employees'' since non-exempt employees often are covered by compensation arrangements that do not include stock options.

The second part of the test requires that at least a majority of the shares awarded under a Plan be awarded to employees who are not officers or directors of a company. This part of the test is not limited to ''exempt employees,'' allowing the calculation of the ''majority of shares awarded'' to include both ''exempt employees'' and non-exempt employees who are not officers or directors. The focus of this requirement is to ensure that a company actually implements a Plan in a broadly-based fashion. In this regard, it does not matter whether the awards to persons other than officers or directors are to ''exempt'' or non-exempt employees. Telephone call between Michael Simon, Milbank, Tweed, Hadley & McCloy, and Kelly McCormick, Attorney, Division of Market Regulation, Commission, dated November 12, 1998.

[8] In this regard, the Exchange proposes to use the definition of ''officer'' contained in Commission Rule 16a–1(f) under the Act.

[9] 15 U.S.C. 78f(b)(5).

[10] Interested persons are directed to the public file, located at the places specified in Item IV below, to review the comments received by the NYSE. The public file contains: (1) a Summary of the Comment Letters (Exhibit B); (2) the NYSE Request for Comment (Exhibit 2A); (3) the Comment Letters in Response to the Request (Exhibit 2B); and (4) the Report of the NYSE Task Force (Exhibit 2C).

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. In particular, the Commission requests comment on whether the ''actual participation'' standard of paragraph 312.03(h) of the Manual (which states that at least a majority of the shares of stock or shares underlying options awarded under the Plan, during the shorter of the three-year period commencing on the date the Plan was adopted by the company or the term of the plan, must be awarded to employees who are not officers or directors), in conjunction with the ''eligibility'' portion of proposed paragraph 312.03(h), adequately addresses commenters' concerns regarding non-executive participation, as well as eligibility, in a Plan. The Commission requests comment on whether a company could meet the definition of a broadly-based plan by nominally complying with the participation prong and the thereby avoid the shareholder approval requirements. In particular, could a company either issue grants to non-executive employees in the first three years of the Plan but reserve a majority of the shares actually available under a Plan for executives and directors once the three years has elapsed? Alternatively, could a company not issue any grants during the first three years of the Plan but reserve all shares available under the Plan for grants only to executives and directors once the three years has elapsed? The Commission also requests comment on whether Section 162(m) of the Internal Revenue Code,[11] (which requires shareholder approval of applicable employee remuneration in excess of one million dollars for covered employees for the remuneration to be eligible for deduction as a trade or business expense) provides shareholders with additional protection by affording shareholders an adequate opportunity to vote on certain stock option plans.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–98–32 and should be submitted by December 10, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–30948 Filed 11–18–98; 8:45 am]

BILLING CODE 8010–01–M

[11] 26 U.S.C. 162(m).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40675; File No. SR–PCX–98–54]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Extension of PCX Specialist Evaluation Program for One Year

November 12, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 2, 1998, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to extend its specialist evaluation program for one year.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange 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

Purpose

On December 22, 1997, the Commission approved a one-year extension of the Exchange's pilot program for the evaluation of equity specialists.[3] The filing was intended to establish an overall score and individual passing scores for specialists, replace the ''Bettering the Quote'' criterion with ''Price Improvement,'' and lower the weighting of the ''Specialist Evaluation Questionnarie'' criterion from 15% to 10% so that Price Improvement could be given a weight of 10%. Subsequently, on May 8, 1998, the Commission approved an Exchange proposal to codify the aforementioned changes.[4] The Exchange is now proposing to extend the pilot program for one year, to January 1, 2000.

The Exchange is requesting a one-year extension of the pilot program so that it will have an opportunity to continue reviewing and evaluating the program before seeking permanent approval. In that regard, on October 29, 1998, the Exchange submitted a report to the Commission responding to particular questions set forth in the May 8, 1998 pilot approval order. The Exchange believes that this program is operating successfully and without any problems, and on that basis, the Exchange believes that a one-year extension of the program is warranted. At this time, the Exchange is not seeking to modify the pilot program.

Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[5] of the Act, in general, and furthers the objectives of Section 6(b)(5),[6] in particular, in that it is designed to promote just and equitable principles of trade.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 39477 (December 22, 1997), 62 FR 68334 (December 30, 1997) and Exchange Act Release No. 39358 (November 25, 1997), 62 FR 64035 (December 3, 1997).

[4] *See* Exchange Act Release No. 39976 (May 8, 1998), 63 FR 26834 (May 14, 1998).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–98–54 and should be submitted by December 10, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

[7] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–30892 Filed 11–18–98; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Federal Assistance To Provide Financial Counseling and Other Technical Assistance to Women

AGENCY: Small Business Administration.

ACTION: Program Announcement No. OWBO–99–012.

SUMMARY: The Small Business Administration (SBA) plans to issue program announcement No. OWBO–99–012 to invite applications from private, not-for-profit organizations to conduct Women's Business Center projects. The authorizing legislation is the Small Business Act, Section 29, 15 U.S.C. Section 656, *as amended* by Pubic Law 105–277, 111 Stat. 2592. SBA Headquarters must receive applications/proposals by the date and time that will be specified in the program announcement. SBA will select successful applicants by a competitive process. The successful applicants will receive an award to provide long term training and counseling to women who want to start or expand businesses. Service and assistance areas must include financial, management, marketing and government procurement/certification assistance. Applicants must include a plan to target women who are socially and economically disadvantaged. The applicant may propose specialized services that will assist women who are veterans, disabled, rural, home-based, etc. SBA will require award recipients to provide services locally and on the Internet via the SBA-funded Online Women's Business Center, *www.onlinewbc,org.* Each applicant must submit a five-year plan that describes proposed fund-raising, training and technical assistance activities. A center may receive financial assistance up to five years, however, the award will be issued annually to conduct a 12-month project. Award recipients must provide non-Federal matching funds as follows: one non-Federal dollar for each two Federal dollars in years 1 and 2; one non-Federal dollar for each Federal dollar in years 3 and 4; and 2 non-Federal dollars for each Federal dollar in year 5. Up to one-half of the non-Federal matching funds may be in the form of in-kind contributions.

DATES: SBA will mail program announcements to interested parties between late November and early December 1998. The approximate opening date will be late November 1998 and the approximate closing date will be late January 1999.

FOR FURTHER INFORMATION CONTACT: Sally Murrell, (202) 205–6673 or Mina Wales (202) 205–6621.

Sherrye P. Henry,

Assistant Administrator, SBA/Office of Women's Business Ownership.

[FR Doc. 98–30910 Filed 11–18–98; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice # 2929]

U.S. Advisory Panel to the U.S. Section of the North Pacific Anadromous Fish Commission (Committee Renewal)

The Department of State has renewed the Charter of the U.S. Advisory Panel to the U.S. Section of the North Pacific Anadromous Fish Commission (NPAFC) for another two years, effective September 3, 1998.

The NPAFC is a venue for consultation and coordination of cooperative high seas fishery enforcement among Convention parties.

The NPAFC was established by the Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean, signed on February 12 by Canada, Japan, the Russian Federation, and the United States, and entered into force on February 16, 1993. The U.S. Advisory Panel will continue to work with the U.S. Section to promote the conservation of anadromous fish stocks, particularly salmon, throughout their migratory range in the North Pacific Ocean, as well as ecologically related species.

The U.S. Section of the Commission is composed of three Commissioners who are appointed by the President. Each Commissioner is appointed for a term not to exceed four years, but is eligible for reappointment. The Secretary of State, in consultation with the Secretary of Commerce, may designate alternate commissioners. The Advisory Panel to the U.S. Section is composed of 14 members appointed by the Secretary in consultation with the Secretary of Commerce, and serve for a term not to exceed 4 years, and may not serve more than two consecutive terms.

The Advisory Panel will continue to follow the procedures prescribed by the Federal Advisory Committee Act (FACA). Meetings will continue to be open to the public unless a determination is made in accordance with Section 10 of the FACA, 5 U.S.C.

Secs. 552b(c) (1) and (4), that a meeting or a portion of the meeting should be closed to the public. Notice of each meeting will continue to be provided for publication in the **Federal Register** as far in advance as possible prior to the meeting.

For further information on the renewal of the Advisory Panel, please contact Bernard Link, International Relations Officer in the Office of Marine Conservation in the Department of State, (202) 647–2335.

Dated: October 7, 1998.

Bernard E. Link,

International Relations Officer.

[FR Doc. 98–30972 Filed 11–18–98; 8:45 am]

BILLING CODE 4710–09–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1998–4765]

Intent To Prepare a Programmatic Environmental Assessment for the Coast Guard ''Optimize Training Infrastructure'' Initiative

AGENCY: Coast Guard, DOT.

ACTION: Notice of intent; notice of meetings and request for comments.

SUMMARY: The Coast Guard announces its intent to prepare a Programmatic Environmental Assessment (PEA) on its ''Optimize Training Infrastructure'' (OTI) Initiative. The PEA will be prepared in accordance with Coast Guard procedures and policies (COMDTINST M16475.1C) and section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508). The OTI Initiative will provide answers to questions about how the Coast Guard training infrastructure (instruction methods, training personnel, and facilities) can best meet current and future performance needs in a financially constrained environment. In 1997, the Coast Guard evaluated their training programs and infrastructure in the preliminary phases of OTI Initiative and recommended that several options for realigning training facilities be considered. This may result in transfer of training activities from one training center to other centers. Four training centers may be directly affected by the action: Training Center (TRACEN) Petaluma, California; TRACEN Cape May, New Jersey; Reserve Training Center (RTC) Yorktown, Virginia; and Aviation Technical Training Center (ATTC) Elizabeth City, North Carolina. Under the different alternatives, some installations would be expanded, some would be downsized, and one or two could be closed. The PEA will analyze the potential environmental and socioeconomic effects of the OTI Initiative, any alternatives developed during the scoping process, and a ''no action'' alternative. A preferred alternative will be identified in the PEA. This notice begins the public scoping process to gather public input on issues and concerns to be analyzed and addressed in the PEA. To assist in gathering public comments, three public scoping meetings will be held.

DATES: The meeting dates are—

1. December 7, 1998, from 6:30 p.m. to 9 p.m., Cape May, NJ.
2. December 8, 1998, from 6:30 p.m. to 9 p.m., Yorktown, VA.
3. December 10, 1998, from 6:30 p.m. to 9 p.m., Petaluma, CA.

A public open house will be held before each scoping meeting from 3:30 p.m. to 5:30 p.m.

Written comments must reach the Docket Management Facility on or before December 24, 1998.

ADDRESSES: The meeting locations are—

1. Cape May—Grand Hotel, Ocean Front and Philadelphia, Cape May, NJ;
2. Yorktown—County Library, 8500 George Washigton Highway, Yorktown, VA; and
3. Petaluma—Petaluma Community Center, 320 North McDowell Blvd, Petaluma, CA.

You may mail your comments to the Docket Management Facility, (USCG–1998–4765), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001, or deliver them to room PL–401, on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The Docket Management Facility maintains the public docket for this notice. Comments and documents referred to in this notice, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, the NEPA process, and NEPA documents, contact Ms. Susan Boyle, Environmental Branch Chief of the Coast Guard Maintenance and Logistics Command Pacific; telephone: 510–437–3973; e-mail: CoastGuard@ttsfo.com. For questions on the OTI Initiative, Contact LCDR Keith Curran, Reserve and Training Directorate, Coast Guard Headquarters; telephone: 202–267–2429; e-mail: CoastGuard@ttsfo.com. For questions on viewing or submitting material to the docket, contact Ms. Dorothy Walker, Chief, Dockets, Department of Transportation; telephone: 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this notice (USCG–1998–4765) and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing to the Docket Management Facility at the address under **ADDRESSES**. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

Discussion

The purpose of this notice is twofold: (1) to announce the Coast Guard's intent to prepare a PEA and (2) to begin the process of gathering the public's comments on this action to assist the Coast Guard in developing the PEA.

In 1997, preliminary phases of the OTI Initiative sought to validate training infrastructure requirements and identify alternative actions. Phase 1 validated existing training courses, determined likely future needs, and identified alternative ways to deliver instruction. Phase 2 measured infrastructure use, determined infrastructure needs for training requirements, and identified ways to gain savings or spread the cost of overhead. Emphasis was on right sizing the capital plant while preserving necessary flexibility.

A number of options are being considered to accomplish this. Depending upon the option selected, training functions would be transferred from one facility to another, functions of a facility increased or decreased, or one or more facilities closed. The following alternatives were recommended for more in depth analysis:

1. Close either Training Center Cape May or Training Center Petaluma and consolidate training functions at the remaining training centers.
2. Close both Training Center Cape May and Training Center Petaluma and

consolidate training functions at RTC Yorktown and Aviation Technical Training Center (ATTC) Elizabeth City, North Carolina.

3. Fill the unused classroom and dormitory spaces at all the training centers with non-training functions.

4. Maintain the status quo.

Training Center (TRACEN) Petaluma, California; TRACEN Cape May, New Jersey; Reserve Training Center (RTC) Yorktown, Virginia; and Aviation Technical Training Center (ATTC) Elizabeth City, North Carolina, would be directly affected by the ''action'' alternatives. Minor components of other Coast Guard facilities currently in leased spaces in Wildwood, NJ, Oklahoma City, OK, and Chesapeake, VA, may also be involved in the actions resulting from the OTI Initiative. The number of people affected at these facilities would be small in comparison to the total facility population; therefore, environmental and socioeconomic impacts to these facilities and host communities are expected to be minimal.

At the end of the 30-day public comment period announced in this notice and after considering input from the public, the Coast Guard will prepare the PEA. The PEA will evaluate a full range of resources for each alternative, including socio-economics, land use, infrastructure/transportation, hazardous materials and waste management, biological resources, cultural resources, air quality, noise, and water resources and will also identify a preferred alternative. Other resources, including geology, soils, and bathymetry, are not expected to be affected from the action and may not be evaluated in detail.

Once the PEA is approved for public review by the Commandant of the Coast Guard, it will be widely distributed. The PEA is anticipated to be available for public review in March 1999. This will once again be announced in the **Federal Register** and a second 30-day public comment period will follow to provide the public with the opportunity to comment on the environmental assessment. Formal hearings will be held at all communities in which there is substantial public interest. At the conclusion of this public comment period, the Commandant will weigh appropriate information and make a final decision. The NEPA process will conclude with the publication of this decision in the **Federal Register**.

Dated: November 16, 1998.

T.J. Barrett,

Director of Reserve and Training Directorate.

[FR Doc. 98–30991 Filed 11–18–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–98–21]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

CORRECTION: Federal Express.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before December 9, 1998.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. ____, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–CMTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Brenda Eichelberger (202) 267–7470 or Terry Stubblefield (202) 267–7624, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on November 13, 1998.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29347.
Petitioner: Rhino Aviation.
Sections of the FAR Affected:
14 CFR 135.299(a).
Description of Relief Sought:
To permit J & A pilots to accomplish a line operational evaluation in a Level C or Level D flight simulator in lieu of a line check in an aircraft.

Docket No: 28820.
Petitioner: Northern Air Cargo, Inc.
Sections of the FAR Affected:
14 CFR 119.67(a)(1).
Description of Relief Sought:
To allow Mr. Leonard F. Kirk to continue to serve as Director of Operations for NAC without holding an airline transport pilot certificate.

Docket No: 26734.
Petitioner: Sierra Industries, Inc.
Sections of the FAR Affected:
14 CFR 91.9(a) and 91.531(a)(1) and (2).
Description of Relief Sought:
To permit Sierra to continue to permit certain qualified pilots of its Cessna Model 500 Citation airplanes (Serial Nos. 0001 through 0349 only) equipped with supplemental type certificat4e (STC) No. SA8176SW or STC No. SA09377SC and either STC No. SA2172NM or STC No. SA645NW to operate those aircraft without a pilot who is designated as second in command.

Docket No: 29151.
Petitioner: Aramco Associated Company (AAC).
Sections of the FAR Affected:
14 CFR 91.609(c).
Description of Relief Sought:
To permit AAC to continue to operate its four Bell Model 212 helicopters (Registration Nos.N701H, N705H, N748H, and N749H; Serial Nos. 35096, 35088, 35060, and 35061, respectively) in part 91 operations until January 31, 2000, without a digital flight data recorder installed in each of those aircraft.

Docket No: 29355.
Petitioner: Crow Executive Air, Inc. (CEA).
Sections of the FAR Affected:
14 CFR 135.299(a).
Description of Relief Sought:
To permit CEA pilots to accomplish a line operational evaluation in a Level C or Level D flight simulator in lieu of a line check in an aircraft.

Docket No: 29342.
Petitioner: Airbus Industrie.

Sections of the FAR Affected:
14 CFR 61.77(a).
Description of Relief Sought:
To permit Airbus to obtain special purpose pilot authorizations for 50 of its pilots to ferry newly manufactured U.S.-registered aircraft from France and Germany to the United States for delivery to a U.S. airline. The pilots will not be carrying persons or property for hire on these new aircraft.

Docket No: 29363.
Petitioner: Charter Fleet International.
Sections of the FAR Affected:
14 CFR 135.299(a).
Description of Relief Sought:
To permit CFI pilots to accomplish a line operational evaluation in a Level C or Level D flight simulator in lieu of a line check in an aircraft.

Docket No.: 29361.
Petitioner: Columbia Helicopters, Inc. (CHI).
Sections of the FAR Affected:
14 CFR 135.152(a).
Description of Relief Sought:
To permit CHI to operater 5 Boeing Chinook Model BV–234 and 12 Boeing/Kawasaki Vertol 107 Model BV/KV–107–II helicopters under part 135 without a Federal Aviation Administration (FAA)-approved digital flight data recorder installed in each aircraft.

Docket No.: 26297.
Petitioner: Fairchild Aircraft Incorporated.
Sections of the FAR Affected:
14 CFR 91.531(a)(3).
Description of Relief Sought:
To permit Fairchild to continue to allow its type-rated company pilots to conduct production and experimental test flights in SA227–CC and SA227–DC Metro 23 airplanes without a pilot designated as second in command (SIC). It also would continue to permit all operators of Fairchild commuter category airplanes (SA227–CC, SA227–DC, and other airplanes on the same type certificate) to conduct flight operations without a designated SIC pilot, provided the airplane is type certificated for single-pilot operations and is carrying nine or fewer passengers.

Docket No.: 29353.
Petitioner: The Air Group, Inc. (AGI).
Sections of the FAR Affected:
14 CFR 135.299(a).
Description of Relief Sought:
To permit AGI pilots to accomplish a line operational evaluation in a Level C or Level D flight simulator in lieu of a line check in an aircraft.

Docket No.: 28732.
Petitioner: Counsel for Vieques Air Link, Inc.
Sections of the FAR Affected:
14 CFR 121.356 and 121.591 through 121.713.
Description of Relief Sought:
To permit Vieques to operate its Britten-Norman BN–2A Mark III Tri-Islander aircraft in scheduled operations without a traffic alert and collision avoidance system installed on those aircraft and without meeting the dispatching and flight release requirements set forth in subparts U and V of part 121.

Dispositions of Petitions

Docket No.: 28673.
Petitioner: Counsel for the Experimental Aircraft Association (EAA) Blatt, Hammesfahr & Eaton.
Sections of the FAR Affected:
14 CFR 91.315, 119.5(g), and 119.21(a).
Description of Relief Sought/Disposition:
To permit EAA to operate its B–17, which holds a limited airworthiness certificate, for the purpose of carrying its members for compensation or hire in its former military vintage airplane.
Disposition, Date, Exemption No.
GRANT, October 30, 1998, Exemption No. 6541A.

Docket No.: 26710.
Petitioner: Skydive DeLand, Inc.
Sections of the FAR Affected:
14 CFR 105.43(a).
Description of Relief Sought/Disposition:
To permit Skydive to allow nonstudent parachutists who are foreign nationals to participate in parachute jumping events sponsored by Skydive without complying with the parachute equipment and packing requirements.
Disposition, Date, Exemption No.:
Grant, October 30, 1998, Exemption No. 5542C.

Docket No.: 29216.
Petitioner: Mid East Jet, Inc.
Sections of the FAR Affected:
14 CFR 25.813(e).
Description of Relief Sought/Disposition:
To permit installation of interior doors between passenger compartments on a Boeing 757–200 series airplane.
Disposition, Date, Exemption No.
Partial Grant, October 19, 1998, Exemption No. 6834.

Docket No.: 28696.
Petitioner: Federal Express.
Sections of the FAR Affected:
14 CFR 25.1423(c).
Description of Relief Sought/Disposition:
Disposition, Date, Exemption No.
Partial Grant, August 28, 1998, Exemption No. 6652A.
Correction to: Partial Grant and Exemption No.

Docket No.: 29224.
Petitioner: Bombardier Aerospace.
Sections of the FAR Affected:
14 CFR C36.3(c).
Description of Relief Sought/Disposition:
To permit the sideline noise certification requirement for Bombardier de Havilland Canada DHC–8 Dash 8 Series 400 airplane to be demonstrated based on the requirement contained in section 3.3.1(a)(2) of Volume 1, Chapter 3 of Annex 16 (Amendment 5) to the Convention on International Civil Aviation (ICAO).
Disposition, Date, Exemption No.
Grant, October 19, 1998, Exemption No. 6833.

[FR Doc. 98–30932 Filed 11–18–98; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA; Certification Task Force

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given that the next plenary meeting of the RTCA Certification Task Force will be held December 2, 1998, starting at 9:00 a.m., at RTCA, 1140 Connecticut Avenue NW., Suite 1020, Washington, DC. This task force is reviewing the ''end-to-end'' certification of advanced avionics systems and, keeping safety as a first priority, developing recommendations for improving the timeliness and reducing the costs of certification.

This meeting agenda will include: (1) Welcome and Introductory Remarks by Task Force Co-chairs Mr. Tony Broderick (former FAA associate administrator and now consultant to Airbus and Mr. Ed Stimpson (General Aviation Manufacturers Association); (2) Task Force Working Group Presentations. The presentations will focus on initial observations and will outline initial recommendations. Time will be allocated for questions, answers, and general discussion.

Attendance is open to the interested public but limited to space availability. With the approval of the co-chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact RTCA at (202) 833–9339 (phone), (202) 833–9434 (fax), or dclarke@rtca/org (e-mail). Members of the public may present a

written statement to the committee at any time.

Issued in Washington, DC, on November 16, 1998.

Janice L. Peters,

Designated Official.

[FR Doc. 98–30935 Filed 11–18–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of intent to rule on application 99–04–C–00–DBQ to Impose and Use the Revenue from a Passenger Facility Charge (PFC) at Dubuque Regional Airport, Dubuque, Iowa

AGENCY: Federal Aviation Administration, (FAA) DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Dubuque Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before December 21, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 601 E. 12th Street, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Kenneth J. Kraemer, A.A.E., Airport Manager, Dubuque Regional Airport, at the following address: 11000 Airport Road, Dubuque, IA 52003.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Dubuque Airport Commission, Dubuque Regional Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Lorna Sandridge, PFC Program Manager, FAA, Central Region, 601 E. 12th Street, Kansas City, MO 64106, (816) 426–4730. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Dubuque Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On November 6, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Dubuque Airport Commission, Dubuque, Iowa, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 20, 1999.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: September, 1999.

Proposed charge expiration date: March, 2001.

Total estimated PFC revenue: $171,391.

Brief description of proposed project(s): Replace a Quick Response Vehicle; Environmental Assessment for Runway 18/36 Extension; Acquire Land for Runway 18/36 Extension; and Engineering and Grading for Runway 18/36 Extension (Phase 1).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application notice and other documents germane to the application in person at the Dubuque Regional Airport.

Issued in Kansas City, Missouri on November 6, 1998.

George A. Hendon,

Manager, Airports Division Central Region.

[FR Doc. 98–30933 Filed 11–18–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–20931, et. al.] [1]

Coach USA, Inc., and Coach USA North Central, Inc.—Control—Nine Motor Passenger Carriers; Notice Tentatively Approving Finance Transactions

AGENCY: Surface Transportation Board.

ACTION: Notice tentatively approving finance transactions.

SUMMARY: Coach USA, Inc. (Coach), a noncarrier, and its wholly owned noncarrier subsidiaries, Coach USA North Central, Inc. (North Central), Coach USA Northeast, Inc. (Northeast), Coach USA South Central, Inc. (South Central), Coach USA Southeast, Inc. (Southeast), Coach USA West, Inc. (West), and Yellow Cab Service Corporation (Yellow Cab Service) (collectively, the subsidiaries), filed applications under 49 U.S.C. 14303 for the subsidiaries to acquire direct control of motor passenger carriers that are currently controlled by Coach or are subject to pending applications for control. The control applications that are the subject of this notice are in furtherance of an internal corporate reorganization plan by Coach. Persons wishing to oppose the applications must follow the rules under 49 CFR 1182.5 and 1182.8.[2] The Board has tentatively approved the transactions, and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments must be filed by January 4, 1999. Applicants may file a reply by January 19, 1999. If no comments are filed by January 4, 1999, this notice is effective on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC–F–20931, *et al.* to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, send one copy of comments to applicants' representatives: Betty Jo Christian and David H. Coburn, Steptoe & Johnson LLP, 1330 Connecticut Avenue, N.W., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695).]

SUPPLEMENTARY INFORMATION: With the growth in the number of Coach-controlled carriers, Coach has determined that it can best maintain and improve the management of its controlled operating carriers, and promote the future growth of Coach, by establishing noncarrier subsidiaries, organized primarily on a regional basis,[3]

[1] These proceedings are not consolidated. A single decision is being issued for administrative convenience.

[2] Revised procedures governing finance applications filed under 49 U.S.C. 14303 were adopted in *Revisions to Regulations Governing Finance Applications Involving Motor Passenger Carriers,* STB Ex Parte No. 559 (STB served Sept. 1, 1998).

[3] Yellow Cab Service is the exception. It will control those operating carriers that focus their services on premium, taxicab, and other specialized transportation services, rather than carriers in a specific region of the country.

that will directly control the existing and future operating carriers of Coach.[4] The transfer of control of each of the motor passenger carriers to one of the subsidiaries will be by a transfer of the ownership interest in each operating carrier (either the stock of the carrier or the stock of the carrier's parent) to the respective subsidiary. Coach will remain the sole owner of all of the stock of the subsidiaries and will indirectly control the operating carriers, providing certain management, corporate and administrative services and benefits to the subsidiaries. Coach submits that there will be no transfer of any federal or state operating authorities held by any of the carriers to be acquired by the subsidiaries and that they will continue operating in the same manner as before the acquisitions of control. Accordingly, Coach asserts that granting the application will not reduce competitive options available to the traveling public.

Coach submits that granting the application will allow the subsidiaries to maintain and improve the high quality of services that are now offered by Coach to each of the operating carriers it controls. According to Coach, by further decentralizing certain management functions, Coach and its subsidiaries will be better able to plan equipment utilization, develop financial plans and coordinate other short-and long-term operational strategies best designed to meet the specific and unique needs of the carriers assigned to each subsidiary, and their customers. Specifically, each subsidiary will maintain a database of assets, including the vehicles operated by each of the operating carriers, which will allow management to more effectively deploy vehicles, resulting in more timely and efficient service to the traveling public. Further, each of the subsidiaries will coordinate the safety and compliance programs of the carriers it controls, with the object of maintaining and raising safety performance levels for each of the operating carriers.

In STB Docket No. MC–F–20931, North Central will be responsible for Coach-controlled carriers that are based in the following states or areas: Illinios, Indiana, Iowa, Kentucky, Michigan, Minnesota, Nebraska, North Dakota, Ohio, South Dakota, western New York, western Pennsylvania, West Virginia, and Wisconsin. North Central seeks control of the following nine[5] motor passenger carriers: Airlines Acquisition Company, Inc., d/b/a Airlines Transportation Company (MC–223575); Blue Bird Coach Lines, Inc. (MC–108531); Butler Motor Transit, Inc. (MC–126876); Gad-About Tours, Inc. (MC–198451); Keeshin Transportation, L.P. (MC–263222); Keeshin Charter Services, Inc. (MC–118044); Lenzner Transportation Management Services d/b/a Lenzner Coach Lines (MC–237433); Niagara Scenic Bus Lines, Inc. (MC–30787); and Wisconsin Coach Lines, Inc. (MC–123432).[6]

In STB Docket No. MC–F–20932, Northeast will be responsible for Coach-controlled carriers that are based in the following states or areas: Connecticut, Delaware, eastern New York, eastern Pennsylvania, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, Rhode Island, Vermont, and Washington, DC. Northeast seeks control of the following 30[7] motor passenger carriers: Brunswick Transportation Company, d/b/a The Maine Line (MC–109495); Cape Transit Corp. (MC–161678); Chenango Valley Bus Lines, Inc. (MC–141324); Clinton Avenue Bus Company (MC–223062),[8] Colonial Coach Corp. (MC–39491); Community Coach, Inc. (MC–76022); Community Transit Lines, Inc. (MC–145548); GL Bus Lines, Inc. (MC–180074); Gray Line Air Shuttle, Inc. (MC–218255); Gray Line New York Tours, Inc. (MC–180229); H.A.M.L. Corp. (MC–194792); Hudson Transit Corp. (MC–133403); Hudson Transit Lines, Inc. (MC–228); International Bus Services, Inc. (MC–155937); Leisure Time Tours (MC–142011); Mini Coach of Boston (MC–231090); Olympia Trails Bus Co., Inc. (MC–138146); Orange, Newark, Elizabeth Bus, Inc. (MC–206227);[9] Pawtuxet Valley Bus Lines (MC–115432); Progressive Transportation Services, Inc. (MC–247074); Red & Tan Tours, Inc. (MC–162174); Red & Tan Charter, Inc. (MC–204842); Rockland Coaches, Inc. (MC–29890); Suburban Trails, Inc. (MC–149081); Suburban Transit Corp. (MC–115116); Suburban Management Corp. (MC–264527); Syracuse & Oswego Coach Lines, Inc. (MC–117805); The Arrow Line, Inc. (MC–1934); Utica-Rome Bus Co., Inc. (MC–7914); and Van Nortwick Bros., Inc. (MC–149025).

In STB Docket No. MC–F–20933, South Central will be responsible for Coach-controlled carriers that are based in the following states or areas: Arkansas, Kansas, Louisiana, Mississippi, Missouri, New Mexico, Oklahoma, Tennessee, and Texas. South Central seeks control of the following eight motor passenger carriers: Americoach Tours, Limited (MC–212649); Bayou City Coaches, Inc. (MC–245246); Browder Tours, Inc. (MC–236290); El Expreso, Inc. (MC–244195); Gulf Coast Transportation, Inc. (MC–201397); Kerrville Bus Company, Inc. (MC–27530); Stardust Tours, Inc., d/b/a Gray Line Tours of Memphis (MC–318341); and Texas Bus Lines, Inc. (MC–37640).

In STB Docket No. MC–F–20934, Southeast will be responsible for Coach-controlled carriers that are based in the following states or areas: Alabama, Florida, Georgia, North Carolina, South Carolina, and Virginia. Southeast seeks controls of the following seven motor passenger carriers: Air Travel Transportation, Inc., d/b/a Atlanta Airport Shuttle and Atlanta Airport Shuttle, Inc. (MC–166420); America Charters, Ltd. (MC–153814); American Sightseeing Tours, Inc. (MC–252353); Le Bus, Inc. (MC–210900); P&S Transportation, Inc. (MC–255382); Tippett Travel, Inc., d/b/a Marie's Charter Bus Lines (MC–174043); and Tucker Transportation Company, Inc. (MC–223424).

In STB Docket No. MC–F–20935, West will be responsible for Coach-controlled carriers that are based in the following states or areas: Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming. West seeks control of the following 14 motor passenger carriers: Airport Bus of Bakersfield (MC–163191); Antelope Valley Bus, Inc. (MC–125057); Arrow Stage Lines, Inc. (MC–29592); Black Hawk-Central City Ace Express, Inc. (MC–273611); California Charters, Inc. (MC–241211); Desert Stage Lines, Inc. (MC–140919); Grosvenor Bus Lines, Inc. (MC–157317); K–T Contract Services, Inc. (MC–218583); Gray Line Tours of Southern Nevada, Inc. (MC–127564); PCSTC, Inc. (MC–184852); Powder

[4] In addition to the instant applications, Coach states that it plans to file another application jointly with Coach Canada, Inc., pursuant to which that subsidiary will seek approval to acquire control of Coach-controlled motor passenger carriers based in Canada.

[5] On October 21, 1998, Coach and North Central filed a separate application for the control of two additional carriers in *Coach USA, Inc., and Coach USA North Central, Inc.—Control—Central Cab Company and Mountaineer Coach, Inc.*, STB Docket No. MC–F–20939.

[6] In *Coach USA, Inc.—Control—Clinton Avenue Bus Company; Orange, Newark, Elizabeth Bus, Inc.; and Wisconsin Coach Lines, Inc.*, STB Docket No. MC–F–20930, Coach seeks an exemption to acquire control over Clinton Avenue Bus Company, Orange, Newark, Elizabeth Bus, Inc., and Wisconsin Coach Lines, Inc. A notice was served and published in the **Federal Register** (63 FR 51397) on September 25, 1998, instituting an exemption proceeding. Comments were due by November 9, 1998.

[7] On October 21, 1998, Coach and Northeast filed a separate application for the control of one additional carrier in *Coach USA, Inc., and Coach USA Northeast, Inc.—Control—Bonanza Bus Lines, Inc.*, STB Docket No. MC–F–20937.

[8] *See supra* note 6.

[9] *See supra* note 6.

River Transportation Services, Inc. (MC–161531), Salt Lake Coaches, Inc. (SLC);[10] Valen Transportation, Inc. (MC–212398); and Worthen Van Service, Inc. (MC–142573).

In STB Docket No. MC–F–20936, Yellow Cab Service will be responsible for those Coach-controlled carriers that focus on specialized transportation services. Yellow Cab Service seeks control of the following four motor passenger carriers: Airport Limousine Service, Inc. (MC–315702); Pittsburgh Transportation Charter Services, Inc. (MC–319195); Metro Cars, Inc. (MC–276823); and Kansas City Executive Coach, Inc. (MC–203805).

Coach and the subsidiaries plan to acquire control of additional motor passenger carriers in the coming months. Coach anticipates that the subsidiaries will be well-positioned to aid in the assessment of possible future acquisitions of motor passenger carriers in the particular area in which each subsidiary functions. According to Coach, the subsidiaries will be able to make those assessments in view of the operations of the carriers under their control and with a view toward developing and carrying out a strategic growth plan best suited to their particular area. Coach asserts that, as a result of the transfer of control to the subsidiaries, the operating carriers will become stronger and more responsive competitors in the areas in which each operates. Thus, the traveling public will have a higher level of assurance of access to passenger services due to the ability of the management of each subsidiary to coordinate the movement of vehicles between and among the operating carriers. In addition, the traveling public will benefit from the strategic planning and coordination by each subsidiary, as well as the ability of management to be responsive to the concerns, complaints and issues raised by the traveling public.

Coach certifies that none of the carriers to be acquired by the subsidiaries holds an unsatisfactory safety rating from the U.S. Department of Transportation; that each has sufficient liability insurance; and none is domiciled in Mexico or owned or controlled by persons of that country; and that approval of the transactions will not significantly affect either the quality of the human environment or the conservation of energy resources. Additional information may be obtained from the applicants' representatives.

Under 49 U.S.C. 14303(b), we must approve and authorize a transaction we find consistent with the public interest, taking into consideration at least: (1) the effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees.

On the basis of the applications, we find that the proposed acquisitions of control are consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding will be deemed vacated and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the applications.[11] If no opposing comments are filed by the expiration of the comment period, this decision will take effect automatically and will be the final Board action.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed acquisitions of control are approved and authorized, subject to the filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this decision will be deemed as having been vacated.

3. This decision will be effective on January 4, 1999, unless timely opposing comments are filed.

4. A copy of this notice will be served on: (1) the U.S. Department of Transportation, Office of Motor Carriers-HIA 30, 400 Virginia Avenue, S.W., Suite 600, Washington, DC 20024; and (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, N.W., Washington, DC 20530.

Decided: November 12, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 98–30982 Filed 11–18–98; 8:45 am]

BILLING CODE 4915–00–P

[10] Coach states that SLC does not yet hold federally issued operating authority but has filed an application with the Federal Highway Administration. In *Coach USA, Inc.—Continuance in Control—Salt Lake Coaches, Inc.,* STB Docket No. MC–F–20928 (STB served Sept. 4, 1998), Coach's continuance in control of SLC was approved upon SLC's becoming a motor passenger carrier.

[11] Under revised 49 CFR 1182.6(c), a procedural schedule will not be issued if we are able to dispose of opposition to the application on the basis of comments and the reply.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33677]

St. Lawrence & Atlantic Railroad (Quebec) Inc.; Acquisition and Operation Exemption—Line of Canadian National Railway Company

St. Lawrence & Atlantic Railroad (Quebec) Inc. (SL&AQ), a noncarrier, has filed a notice of exemption under 49 CFR 1150.31 to acquire overhead trackage rights from Canadian National Railway Company (CN), over approximately 15.83 miles of rail line owned by St. Lawrence & Atlantic Railroad Company (SL&A) between Island Pond, VT (MP 0.00 on CN's Sherbrooke Subdivision) and the United States/Canada border, near Norton, VT (MP 15.83 on CN's Sherbrooke Subdivision).

This transaction is related to STB Finance Docket No. 33678, *Emons Transportation Group, Inc., and Emons Railroad Group, Inc.—Continuance in Control Exemption—St. Lawrence & Atlantic Railroad (Quebec) Inc.,* wherein Emons Transportation Group, Inc. and Emons Railroad Group, Inc. have filed a petition for exemption to continue in control of SL&AQ once it acquires CN's overhead trackage rights and becomes a Class III rail carrier.[1]

SL&AQ intends to consummate the transaction and begin operations on or soon after the effective date of this notice *i.e.*, November 5, 1998, and upon approval and effectiveness of the related petition for exemption in STB Finance Docket No. 33678.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33677, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Kevin M. Sheys, Oppenheimer Wolff Donnelly &

[1] Emons Transportation Group, Inc., and Emons Railroad Group, Inc., noncarriers, currently control through stock ownership four Class III rail common carriers: Maryland and Pennsylvania Railroad Company (M&P), Yorkrail, Inc. (YRK), Penn Eastern Rail Lines, Inc. (PERL), and SL&A. Emons Transportation Group Inc. controls all four carriers; Emons Railroad Group, Inc. controls YRK, PERL, and SL&A.

Bayh LLP, 1350 Eye Street, N.W., Suite 200, Washington, DC 20005.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: November 12, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–30983 Filed 11–18–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub–No. 129X)]

Union Pacific Railroad Company—Abandonment Exemption—in Dallas and Guthrie Counties, IA (Perry Branch and Yale Spur)

On October 30, 1998, Union Pacific Railroad Company (UP) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon 11.4 miles of continuous lines of railroad known as the Perry Branch and the Yale Spur, extending: (1) from milepost 369.0 near Dawson to the end of the line at milepost 374.2 near Herndon (the Perry Branch); and (2) from milepost 54.3 at Herndon to the end of the line at milepost 48.1 at Yale (the Yale Spur) (collectively, the Line), in Dallas and Guthrie Counties, IA. The Line traverses U. S. Postal Service Zip Codes 50066 (Dawson), 50128 (Jamaica and Herndon), and 50277 (Yale), and includes the rail stations of Herndon at mileposts 374.2 and 54.3 and Yale at milepost 49.0.

The Line does not contain federally granted rights-of-way. Any documentation in UP's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by February 17, 1999.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the Line, the Line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than December 9, 1998. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–33 (Sub-No. 129X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001, and (2) Joseph D. Anthofer, Union Pacific Railroad Company, 1416 Dodge Street, Room 830, Omaha, NE 68179–0830. Replies to the UP petition are due on or before December 9, 1998.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: November 10, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–30653 Filed 11–18–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 13, 1998.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before December 21, 1998 to be assured of consideration.

Financial Management Service (FMS)

OMB Number: 1510–0004.
Form Number: FMS 285–A.
Type of Review: Extension.
Title: Schedule of Excess Risks.
Description: Listing of Excess Risks written or assumed by Treasury certified companies showing compliance with Treasury Regulations to assist Treasury in determining solvency of certified companies for the benefit of writing Federal surety bonds.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 357.
Estimated Burden Hours Per Respondent: 20 hours.
Frequency of Response: Quarterly, Annually (applications when filed by company).
Estimated Total Reporting Burden: 7,140 hours.

OMB Number: 1510–0047.
Form Number: TFS 2211.
Type of Review: Extension.
Title: List of Data.
Description: Information is collected from insurance companies to provide Treasury with a basis for determining acceptability of insurance companies applying for a Certificate of Authority to write or reinsure Federal surety bonds.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 25.
Estimated Burden Hours Per Respondent: 18 hours.
Frequency of Response: On occasion (applications when filed by company).
Estimated Total Reporting Burden: 450 hours.

OMB Number: 1510–0052.

Form Number: FMS 458 and FMS 459.

Type of Review: Extension.

Title: Financial Institution Agreement and Application Forms for Designation as a Treasury Tax and Loan Depositary (FMS 458); and Resolution Authorizing the Financial Institution Agreement and Application for Designation as a Treasury Tax and Loan Depositary (FMS 459).

Description: Financial institutions are required to complete an Agreement and Application to participate in the Federal Tax Deposit/Treasury Tax and Loan Programs. The approved application designates the depositary as an authorized recipient of taxpayers' deposits for Federal taxes.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 450.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: Other (once for duration of the authorization).

Estimated Total Reporting Burden: 225 hours.

Clearance Officer: Jacqueline R. Perry (301) 344–8577, Financial Management Service, 3361–L 75th Avenue, Landover, MD 20785.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–30885 Filed 11–18–98; 8:45 am]

BILLING CODE 4810–35–P

UNITED STATES INFORMATION AGENCY

Faculty Development and Administrative Training for the American University in Kyrgyzstan Program; Request for Proposals

SUMMARY: The Office of Academic Programs of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award program. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to assist the American University in Kyrgyzstan (AUK) with faculty development and administrative training.

Program Information

Overview

This program is part of a collaborative effort to support curriculum and faculty development at the American University in Kyrgyzstan (AUK). The program will award up to $1,950,000 for a three year period for faculty development and administrative training for the American University in Kyrgyzstan. Approximately $300,000 of the total program budget should be devoted to the administrative training component, and the rest should be devoted to the faculty development component and administrative costs. The grantee organization or organizations will be expected to assist AUK to develop its faculty and administrative capacity through a comprehensive program of exchange and support activities.

Objectives

The overall objective of this effort is to support the American University in Kyrgyzstan in adapting U.S. educational curricula and practices to meet educational needs in Kyrgyzstan, and in fostering respect for principles of academic integrity and excellence. This assistance program will be divided into two parts: a faculty development component and an administrative training component. The objective of the faculty development component is to carry out a comprehensive program of faculty and curriculum development for the American University in Kyrgyzstan, including collaboration on the general education program and support in the following targeted fields: Journalism/Communications, Economic, Psychology, Sociology, American Studies, International Relations/Political Sciences, and other fields as needed. Applicants should describe a program of support for the targeted disciplines as well as an overall view of support for AUK. Applicants are encouraged to undertake exchange activities within each discipline in cooperation with one U.S. college or university department in that discipline in order to ensure program continuity and to enhance the mutual understanding of the participants. The faculty development program may take the shape of a series of exchanges between a U.S. and an AUK department in each targeted field. The exchanges in the several targeted fields may all be concentrated in one U.S. college or university; they may be concentrated in institutions in the same U.S. region; or they may involve several individual departments in colleges and universities across the U.S. These exchanges should provide participating AUK junior faculty with the possibility of earning the master's degree at a U.S. institution. Faculty exchange in a given discipline with a college department which does not offer the master's degree is allowable as long as appropriate arrangements can be made with another U.S. institution for study towards the master's degree where required. One small to medium sized institution of higher education may be designated as a model institution for AUK participants to consider as they adapt to the educational needs of Kyrgyzstan what they are learning in the U.S The model institution should also participate in faculty development in one or more of the targeted disciplines and/or in administrative training for AUK. Site visits to the model institution by all AUK exchange participants in the U.S. are encouraged where feasible.

The objective of the administrative training component is to carry out a comprehensive program of administrative support and training for AUK. Proposals should plan for training and support in the following priority areas: admissions, registrar's office (including registration, records and scheduling), financial aid, finance, accounting and budgeting, and library collections. Proposals may also plan for support in the areas of academic advising, student services, public relations, institutional development, and other services as needed. The goal of the administrative training exchanges is to facilitate a mentoring program for AUK administrators with U.S. counterparts through a series of exchange visits that should include visits to Kyrgyzstan by U.S. administrators with practical experience in these activities. Proposals may coordinate the administrative training components with a program of research on international educational development.

USIA encourages applications from consortia of colleges and universities or from U.S. partnerships developed for the purposes of this grant, as well as from any single organization with the capacity to administer this program. If a lead U.S. institution in a consortium is responsible for submitting an application on behalf of a consortium, the application must document the lead school's stated authority to represent the consortium.

Guidelines

Participants

The project is designed for the following participants: faculty, administrators, staff and students at

AUK and at the U.S. colleges or universities identified as partners in the faculty development and administrative training for AUK; postdoctoral specialists or doctoral candidates from the U.S. who are qualified to teach courses at AUK and to train AUK faculty and students; and other qualified educational and administrative specialists as appropriate. Applicant organizations do not need to obtain a letter of commitment from AUK, which has indicated its interest and commitment directly to USIA.

Logistics

The recipient organization will be responsible for most arrangements associated with this program. These include providing international and domestic travel arrangements for all participants, making lodging and local transportation arrangements for visitors, orienting and debriefing participants, preparing any necessary support material, and working with AUK, U.S. host institutions and individual grantees to achieve maximum program effectiveness.

Visa/Insurance/Tax Requirements

Programs must comply with J–1 visa regulations, including those pertaining to insurance. Please refer to Solicitation Package for further information. Administration of the program must be in compliance with reporting and withholding regulations for federal, state and local taxes as applicable. Recipient organizations should demonstrate tax regulation adherence in the proposal narrative and budget.

Budget Guidelines

Organizations with less than four years of experience in conducting international exchange programs are ineligible for this grant competition.

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as a breakdown reflecting the administrative budget, the budget for the faculty development component, the budget for the administrative training component, and detailed budgets for each of the three years of the grant. The total administrative costs funded by USIA may not exceed 20% of the total request. Approximately $300,000 should be devoted to the administrative training component. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with USIA concerning this RFP should reference the above title and number E/ASU–99–07.

FOR FURTHER INFORMATION CONTACT: Office of Academic Programs; Advising, Teaching and Specialized Programs Division; Specialized Programs Branch, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547, telephone: (202) 619–4097, fax: (202) 401–1433, internet: seisen@usia.gov to request a Solicitation Package containing more detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Pleas specify USIA Program Officer Sam Eisen on all inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition with applicants until the proposal review process has been completed.

Contact Information for AUK

Applicants are encouraged to consult with the American University in Kyrgyzstan while planning their proposals. The primary contact person at AUK in Martha Merrill, Dean of Faculty and Curriculum Development:

Martha C. Merrill, c/o USIS-Bishkek, Kyrgyz Republic, Department of State, Washington, DC 20521–7040, 996–3312–21–37–72 or 21–36–32 phones at USIS, 996–3312–21–09–48 fax at USIS, E-mail: mmerrill@hotmail.com

Applicants may also contact:

ED Kulakowski, Public Affairs Officer, USIS Bishkek, tel: (996)–3312–213–632, 213–772, fax: (996)–3312–210–948, e-mail: pao@usis.gov.kg.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from USIA'S website at http://www.usia.gov/education/rfps. Please read all information before downloading.

To Receive a Solicitation Package Via Fax on Demand

The entire Solicitation Package may be requested from the Bureau's ''Grants Information Fax on Demand System,'' which is accessed by calling 202/401–7616. The ''Table of Contents'' listing available documents and order numbers should be the first order when entering the system.

Deadline for Proposals: All proposal copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on March 8, 1999. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Approximate program dates: Grants should begin on or about July 1, 1999.

Duration: July 1, 1999–June 30, 2002.

Submissions

Applicants must follow all instructions in the Solicitation Package. The original and 8 copies of the application should be sent to:

U.S. Information Agency, Ref.: E/ASU–9–07, Office of Grants Management, E/XE, Room 32,6 301 4th Street, S.W., Washington, D.C. 20547

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5′ diskette, for matted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIS posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' USIA ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

Year 2000 Compliance Requirement (Y2K Requirement)

The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange with USIA. The inability to process information in accordance with Federal requirements could result in grantees' being required to return funds that have not been accounted for properly.

USIA therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at http://www.itpolicy.gsa.gov.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the USIA Office of East European and NIS affairs and USIS Bishkek. Eligible proposals will be forwarded to panels of USIA officers for advisory review. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Final funding decisions are at the discretion of USIA's Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA Grants Officer.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through the Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1993 (Freedom Support Act). Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: November 9, 1998.

Judith Siegel,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 98–30648 Filed 11–18–98; 8:45 am]

BILLING CODE 8230–01–M

Corrections

Federal Register
Vol. 63, No. 223
Thursday, November 19, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Peer Review Meeting of the Draft Research Protocol of the Full Ensemble Fire Testing of Fire Fighers' Protective Clothing and Equipment

Correction

In notice document 98–29098 beginning on page 58396 in the issue of Friday, October 30, 1998, make the following correction:

On page 58397, in the first column, in the second full paragraph, in the seventh line remove the words ''Page 2''.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40448; International Series Release No. 1158; File No. SR–Amex–98–27]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Settlement of the Eurotop 100 Index

Correction

In notice document 98–25491 beginning on page 51107, in the issue of Thursday, September 24, 1998, make the following correction:

On page 51108, in the second column, above the FR Doc. line, the signature was omitted and should read as follows:

Jonathan G. Katz,

Secretary.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40521; File No. SR–NASD–98–63]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Fees for Nasdaq's Workstation II Service for Those Subscribers Who Are Not Members of the NASD

October 5, 1998.

Correction

In notice document 98–27512, beginning on page 55167, in the issue of Wednesday, October 14, 1998, the heading is corrected by adding the date ''October 5, 1998''.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40557; File No. SR–Phix–97–55]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1 and 2 to Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Establishing an Enhanced Parity Split Pilot Program for Specialists in Foreign Currency Options Effective Until October 1, 1999

Correction

In notice document 98–28193, beginning on page 56284, in the issue of Wednesday, October 21, 1998, make the following correction:

On page 56286, in the third column, above the FR Doc. line, the signature was omitted and should read as follows:

Margaret H. McFarland,

Deputy Secretary.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40555; File No. SR–NASD–98–48]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 3 and 4 to Proposed Rule Change by the National Association of Securites Dealers, Inc., Relating to the Selection of Arbitrators in Arbitrations Involving Public Customers

October 14, 1998.

Correction

In notice document 98–28321, beginning on page 56670, in the issue of Thursday, October 22, 1998, the heading is corrected by adding the date ''October 14, 1998''.

BILLING CODE 1505-01-D

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

Correction

In notice document 98–28596, appearing on page 57147, in the issue of Monday, October 26, 1998, make the following correction:

On page 57147, in the third column, above the FR Doc. line, the signature was omitted and should read as follows:

Margaret H. McFarland,

Deputy Secretary.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 40592; File No. SR–NASD–98–77]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Central Registration Depository Fees

Correction

In notice document 98–28849, beginning on page 57718, in the issue of Wednesday, October 28, 1998, make the following correction:

On page 57721, in the second column, above the FR Doc. line, the signature was omitted and should read as follows:

Margaret H. McFarland,

Deputy Secretary.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40577, File No. SR–PSE–97–02]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendments 1 and 2 to the Proposed Rule Change by the Pacific Exchange, Inc., Relating to the Proprietary Hand-Held Terminal Program for Floor Brokers

Correction

In notice document 98–28850, beginning on page 57721, in the issue of Wednesday, October 28, 1998, make the following correction:

On page 57726, in the third column, above the FR Doc. line, the signature was omitted and should read as follows:

Margaret H. McFarland,

Deputy Secretary.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40588; File No. SR–DTC–98–13]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Relating to Establishing a Practice of Collecting the Difference Between a Participant's Required Fund Deposit and its Actual Fund Deposit More Frequently

October 22, 1998.

Correction

In notice document 98–28847, beginning on page 57716, in the issue of Wednesday, October 28, 1998, the heading is corrected by adding the date ''October 22, 1998''.

BILLING CODE 1505-01-D

federal register

Thursday
November 19, 1998

Part II

Department of Commerce

Bureau of Export Administration

15 CFR Parts 742 and 744

India and Pakistan Sanctions and Other Measures; Interim Rule

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 742 and 744

[Docket No. 98–1019261–8261–01]

RIN 0694–AB73

India and Pakistan Sanctions and Other Measures

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule.

SUMMARY: In accordance with section 102(b) of the Arms Export Control Act, President Clinton reported to the Congress on May 13th with regard to India and May 30th with regard to Pakistan his determinations that those non-nuclear weapon states had each detonated a nuclear explosive device. The President directed that the relevant agencies and instrumentalities of the United States take the necessary actions to impose the sanctions described in section 102(b)(2) of that Act.

The Bureau of Export Administration (BXA) is taking a number of sanctions measures consistent with the President's directive. Consistent with the provisions of section 102(b)(2)(G) of the Arms Export Control Act, BXA is revising the Export Administration Regulations (EAR) to codify sanctions against India and Pakistan by setting forth a licensing policy of denial for exports and reexports of items controlled for nuclear nonproliferation and missile technology reasons to India and Pakistan, with limited exceptions. This licensing policy was adopted in practice in existing regulations in June 1998. This rule also contains certain discretionary measures that are being taken. BXA is adding to the Entities List set forth in the EAR certain Indian and Pakistani government, parastatal, and private entities determined to be involved in nuclear or missile activities. In addition, Indian and Pakistani military entities are added to the Entity List in order to supplement the sanctions. BXA is adopting a licensing policy of a presumption of denial with respect to items specifically listed on the Commerce Control List to listed Indian and Pakistani military entities, with limited exceptions.

This rule will increase the number of license applications submitted for India and Pakistan.

DATES: This rule is effective November 19, 1998. Comments on this rule must be received on or before January 19, 1999.

ADDRESSES: Written comments on this rule should be sent to Sharron Cook, Regulatory Policy Division, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044. Express mail address: Sharron Cook, Regulatory Policy Division, Bureau of Export Administration, Department of Commerce, 14th and Pennsylvania Avenue, NW, Room 2705, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Eileen M. Albanese, Director, Office of Exporter Services, Bureau of Export Administration, Telephone: (202) 482–0436.

SUPPLEMENTARY INFORMATION:

Background

In accordance with section 102(b) of the Arms Export Control Act, President Clinton reported to the Congress on May 13th with regard to India and May 30th with regard to Pakistan his determinations that those non-nuclear weapon states had each detonated a nuclear explosive device. The President directed in the determination reported to the Congress that the relevant agencies and instrumentalities of the United States take the necessary actions to impose the sanctions described in section 102(b)(2) of that Act.

Consistent with the President's directive, the Bureau of Export Administration (BXA) is imposing certain sanctions, as well as certain supplementary measures to enhance the sanctions. Consistent with the provisions of section 102(b)(2)(G) of the Arms Export Control Act, BXA is amending the Export Administration Regulations (EAR) by adding new § 742.16, India and Pakistan sanctions. This section codifies a license review policy of denial for the export and reexport of items controlled for nuclear proliferation (NP) reasons to all end-users in India and Pakistan, except for computers (see § 742.12(b)(3)(iii), High Performance Computers, for license review policy for computers). This licensing policy was adopted in practice in existing regulations in June 1998. This section also includes a new license policy of denial for the export and reexport of items controlled for missile technology (MT) reasons to all end-users in India and Pakistan, except that items listed in § 740.2(a)(5) of the EAR remain eligible for applicable License Exceptions when intended to ensure the safety of civil aviation and safe operation of commercial passenger aircraft and licenses for items intended for the preservation of safety of civil aircraft will be reviewed on a case-by-case basis. Items controlled on the Commerce Control List for nuclear and missile technology reasons have been made subject to this sanction policy because of their significance for nuclear explosive purposes and for delivery of nuclear devices.

To supplement the sanctions of § 742.16, this rule adds certain Indian and Pakistani government, parastatal, and private entities determined to be involved in nuclear or missile activities to the Entity List in Supplement No. 4 to part 744. License requirements for these entities are set forth in the newly added § 744.11. Exports and reexports of all items subject to the EAR to listed government, parastatal, and private entities require a license. A license is also required if you know that the ultimate consignee or end-user is a listed government, parastatal, or private Indian or Pakistani entity, and the item is subject to the EAR. The only exception to this license requirement is for items listed in § 740.2(a)(5) of the EAR, which remain eligible for applicable License Exceptions when intended to ensure the safety of civil aviation and safe operation of commercial passenger aircraft. With respect to subordinates of listed entities in India and Pakistan, only those specifically listed in Supplement No. 4 to part 744, Entity List, are subject to the restrictions and policies set forth in § 742.16, except that General Prohibition 5 (see 736.2(b)(5)) continues to apply to all exports and reexports to Indian and Pakistani entities, including unlisted subordinates of listed entities. All applications to export or reexport items subject to the EAR will be reviewed with a presumption of denial to these entities, except items for the preservation of safety of civil aircraft will be reviewed on a case-by-case basis. Except for items controlled for NP or MT reasons, exports or reexports to listed parastatals and private entities with whom you have a preexisting business arrangement will be considered on a case-by-case basis, with a presumption of approval in cases where neither the arrangement nor the specific transaction involves nuclear or missile activities and the exports or reexports are pursuant to that arrangement. The term ''business arrangement'' covers the full range of business agreements, including general contracts, general terms agreements (e.g., agreements whereby the seller delivers products under purchase orders to be issued by the buyer), general business agreements, offset agreements, letter agreements that are stand-alone contracts, and letter agreements that are amendments to existing contracts or other agreements. The terms of the

preexisting business arrangement policy may also apply to the longstanding continued supply of a particular item or items from the exporter to the entity even when there is no current agreement between the firms. BXA, in conjunction with other agencies, will determine eligibility under the preexisting business arrangement policy. In order to be eligible under the policy, you must provide documentation to establish such an arrangement. The documentation should be provided at the time you submit a license application to export or reexport items to any listed parastatal or private entity.

To further supplement the sanctions of § 742.16, this rule adds certain Indian and Pakistani military entities to the Entity List in Supplement No. 4 to part 744. License requirements for these entities are set forth in the newly added § 744.12. Exports and reexports of all items subject to the EAR having a classification other than EAR99 to listed military entities require a license. A license is also required if you know that the ultimate consignee or end-user is a listed military Indian or Pakistani entity, and the item is subject to the EAR having a classification other than EAR99. No License Exception overcomes this license requirement, except a License Exception for items listed in § 740.2(a)(5) of the EAR when intended to ensure the safety of civil aviation and safe operation of commercial passenger aircraft. Applications to export or reexport items controlled for NP or MT reasons to listed military entities will be denied, except items intended to ensure the safety of civil aviation and safe operation of commercial passenger aircraft, which will be reviewed on a case-by-case basis; and computers, which will be reviewed with a presumption of denial.

The addition of entities to the Entity List does not relieve exporters or reexporters of their obligations under General Prohibition 5 in § 736.2(b)(5) of the EAR, ''You may not, without a license, knowingly export or reexport any item subject to the EAR to an end-user or end-use that is prohibited by part 744 of the EAR.'' BXA strongly urges the use of Supplement No. 3 to part 732 of the EAR, ''BXA's 'Know Your Customer' Guidance and Red Flags'' when exporting or reexporting to India and Pakistan.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect, to the extent permitted by law, the provisions of the EAA and the EAR in Executive Order 12924 of August 19, 1994, continued by Presidential notices of August 15, 1995, August 14, 1996, August 15, 1997, and August 13, 1998.

Saving Clause

Shipments of items removed from License Exception or NLR authorizations as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export, on November 19, 1998, pursuant to actual orders for export to that destination in India or Pakistan, may proceed to that destination under the previous License Exception or NLR authorization provisions so long as they have been exported from the United States before December 17, 1998. Any such items not actually exported before midnight December 17, 1998, require a license in accordance with this regulation.

Rulemaking Requirements

1. This final rule has been determined to be significant for the purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB Control Number. This rule involves collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control number 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 40 minutes to prepare and submit electronically and 45 minutes to submit manually on form BXA–748P. This rule contains one new information collection requirement approved under control number 0694–0111, ''India and Pakistan Sanctions,'' which carries a burden hour estimate of 10 minutes per submission for miscellaneous activities, such as attaching supporting documentation that substantiates a preexisting business relationship. An additional 2 minutes per submission is needed for recordkeeping.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (Sec. 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this interim rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

However, because of the importance of the issues raised by these regulations, this rule is being issued in interim form and comments will be considered in the development of final regulations.

Accordingly, the Department encourages interested persons who wish to comment to do at the earliest possible time to permit the fullest consideration of views.

The period for submission of comments will close January 19, 1999. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Comments should be provided with 5 copies.

Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, Room 4525, Department of Commerce, 14th Street and Pennsylvania Avenue, NW, Washington, DC 20230. Records in this

facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 482–5653.

The reporting burden for this collection is estimated to be approximately 57 minutes, including the time for gathering and maintaining the data needed for completing and reviewing the collection of information. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments regarding these burden estimates or any other aspect of the collection of information, including suggestions for reducing the burdens, should be forwarded to Sharron Cook, Regulatory Policy Division, Office of Exporter Services, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044, and David Rostker, Office of Management and Budget, OMB/OIRA, 725 17th Street, NW, NEOB Rm. 10202, Washington, DC 20503.

List of Subjects

15 CFR Part 742

Exports, Foreign trade.

15 CFR Part 744

Exports, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, parts 742 and 744 of the Export Administration Regulations (15 CFR parts 730–774) are amended, as follows:

1. The authority citation for 15 CFR part 742 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 3 CFR, 1993 Comp., p. 608; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 3 CFR, 1996 Comp. p. 219; E.O. 13026, 3 CFR, 1996 Comp., p. 228; 3 CFR, 1997 Comp. p. 306; and Notice of August 13, 1998 (63 FR 44121, August 17, 1998).

2. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 3 CFR, 1996 Comp., p. 228; 3 CFR, 1997 Comp. p. 306; and Notice of August 13, 1998 (63 FR 44121, August 17, 1998).

PART 742—[AMENDED]

3. Part 742 is amended by:

a. Revising § 742.12, paragraph (b)(3)(iii); and

b. Adding a new section 742.16, to read as follows:

§ 742.12 High Performance Computers.

* * * * *

(b) *Licensing policy.* * * *

(3) *Computer Tier 3.* * * *

(iii) *Licensing policy for other end-users and end-uses.* License applications for exports and reexports to other end-uses and end-users located in Computer Tier 3 countries will generally be approved, except there is a presumption of denial for all applications for exports and reexports of computers having a CTP greater than 2,000 MTOPS destined to Indian and Pakistani entities determined to be involved in nuclear, missile, or military activities included in Supplement No. 4 to part 744 (Entity List). All license applications for exports and reexports to India and Pakistan not meeting these criteria for presumption of denial will be considered on a case-by-case basis under other licensing policies set forth in the EAR applicable to such computers.

* * * * *

§ 742.16 India and Pakistan Sanctions.

In accordance with section 102(b) of the Arms Export Control Act, President Clinton reported to the Congress on May 13th with regard to India and May 30th with regard to Pakistan his determinations that those non-nuclear weapon states had each detonated a nuclear explosive device. The President directed that the relevant agencies and instrumentalities of the United States take the necessary actions to impose the sanctions described in section 102 (b)(2) of that Act. Consistent with the provisions of section 102(b)(2)(G) of the Arms Export Control Act, the following sanctions measures are imposed against India and Pakistan.

(a) *License requirement.* A license is required for all exports and reexports of items controlled for nuclear nonproliferation (NP) reasons to all end-users in India and Pakistan. In addition, a license is required for all exports and reexports of items controlled for missile technology (MT) reasons to all end-users in India and Pakistan, except items listed in § 740.2(a)(5) of the EAR, which remain eligible for applicable License Exceptions when intended to ensure the safety of civil aviation and safe operation of commercial passenger aircraft.

(b) *Licensing policy.*

(1) *Nuclear Nonproliferation.* There is a policy of denial for all applications to export and reexport items controlled for nuclear proliferation (NP) reasons to all end-users in India and Pakistan, except high performance computers (see § 742.12(b)(3)(iii) of this part for licensing policy regarding high performance computers).

(2) *Missile Technology.* There is a policy of denial for all applications to export and reexport items controlled for missile technology (MT) reasons to all end-users in India and Pakistan, except items intended to ensure the safety of civil aviation and safe operation of commercial passenger aircraft, which will be reviewed on a case-by-case basis.

PART 744—[AMENDED]

4. Part 744 is amended by revising the last sentence of § 744.1(c), and adding two new sections 744.11 and 744.12, to read as follows:

§ 744.1 General provisions.

* * * * *

(c) * * * No License Exceptions are available for exports or reexports to listed entities of specified items, except License Exceptions for items destined to listed Indian or Pakistani entities intended to ensure the safety of civil aviation and safe operation of commercial passenger aircraft (see § 744.11(b) and § 744.12(b) of this part).

* * * * *

§ 744.11 Restrictions on certain government, parastatal, and private entities in Pakistan and India.

To supplement sanctions measures against India and Pakistan, set forth in § 742.16 of the EAR, a prohibition is imposed on exports and reexports to certain government, parastatal, and private entities in India and Pakistan determined to be involved in nuclear or missile activities. With respect to subordinates of listed entities in India and Pakistan, only those specifically

listed in Supplement No. 4 to part 744, Entity List, are subject to the restrictions and policies set forth in this section. The addition of entities to Supplement No. 4 to part 744, Entity List, does not relieve you of your obligations under General Prohibition 5 in § 736.2(b)(5) of the EAR: ''you may not, without a license, knowingly export or reexport any item subject to the EAR to an end-user or end-use that is prohibited by part 744 of the EAR.'' You are urged to use the guidance in Supplement No. 3 to part 732 of the EAR, ''BXA's 'Know Your Customer' Guidance and Red Flags'' when exporting or reexporting to India and Pakistan.

(a) *General restriction.* Certain government, parastatal, and private entities in India and Pakistan determined to be involved in nuclear or missile activities are included in Supplement No. 4 to this part 744 (Entity List). (See also § 744.1(c) of the EAR.) These entities are ineligible to receive exports or reexports of items subject to the EAR without a license. Exports and reexports of all items subject to the EAR to listed government, parastatal, and private entities require a license. A license is also required if you know that the ultimate consignee or end-user is a listed government, parastatal, or private Indian or Pakistani entity, and the item is subject to the EAR.

(b) *Exceptions.* No License Exceptions are available to the entities described in paragraph (a) of this section, except those applicable to items listed in § 740.2(a)(5) of the EAR, which remain available to such entities when intended to ensure the safety of civil aviation and safe operation of commercial passenger aircraft.

(c) *License review standards.* (1) *Government entities.* Applications to export or reexport items controlled for NP or MT reasons to listed government entities will be denied, except items intended for the preservation of safety of civil aircraft, which will be reviewed on a case-by-case basis; and computers, which will be reviewed with a presumption of denial. All other items subject to the EAR to these listed entities will be reviewed with a presumption of denial.

(2) *Parastatal and Private entities.* Applications to export or reexport items controlled for NP or MT reasons to certain parastatal and private entities will be denied, except items intended to ensure the safety of civil aviation and safe operation of commercial passenger aircraft, which will be reviewed on a case-by-case basis; and computers, which will be reviewed with a presumption of denial. All other items subject to the EAR to these listed entities will be reviewed with a presumption of denial. Except for items controlled for NP or MT reasons, exports or reexports to listed parastatals and private entities with whom you have a preexisting business arrangement will be considered on a case-by-case basis, with a presumption of approval in cases where neither the arrangement nor the specific transaction involves nuclear or missile activities and the exports or reexports are pursuant to that arrangement. The term ''business arrangement'' covers the full range of business agreements, including general contracts, general terms agreements (e.g., agreements whereby the seller delivers products under purchase orders to be issued by the buyer), general business agreements, offset agreements, letter agreements that are stand-alone contracts, and letter agreements that are amendments to existing contracts or other agreements. The terms of the preexisting business arrangement policy may also apply to the longstanding continued supply of a particular item or items from the exporter to the entity even when there is no current agreement between the firms. BXA, in conjunction with other agencies, will determine eligibility under the preexisting business arrangement policy. In order to be eligible under the policy, you must provide documentation to establish such an arrangement. The documentation should be provided at the time you submit a license application to export or reexport items to any listed parastatal or private entity.

§ 744.12 Restrictions on certain military entities in Pakistan and India.

(a) *General restriction.* Certain military entities in India and Pakistan are included in Supplement No. 4 to this part 744 (Entity List). (See also § 744.1(c) of the EAR.) These entities are ineligible to receive exports or reexports of all items subject to the EAR having a classification other than EAR99 without a license. Exports and reexports of all items subject to the EAR having a classification other than EAR99 to listed military entities require a license. A license is also required if you know that the ultimate consignee or end-user is a listed military Indian or Pakistani entity, and the item is subject to the EAR having a classification other than EAR99.

(b) *Exceptions.* No License Exceptions are available to the entities described in paragraph (a) of this section, except those applicable to items listed in § 740.2(a)(5) of the EAR, which remain available to such entities when intended to ensure the safety of civil aviation and safe operation of commercial passenger aircraft.

(c) *License review policy.* Applications to export or reexport items controlled for NP or MT reasons to listed military entities will be denied, except items intended to ensure the safety of civil aviation and safe operation of commercial passenger aircraft, which will be reviewed on a case-by-case basis; and computers, which will be reviewed with a presumption of denial. All other license applications will be reviewed with a presumption of denial.

5. Supplement No. 4 to part 744 is revised to read as follows:

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST

Country	Entity	License requirement	License review policy	Federal Register citation
This Supplement lists certain entities subject to license requirements for specified items under this part 744 of the EAR. License requirements for these entities includes exports and reexports, unless otherwise stated. This list of entities is revised and updated on a periodic basis in this Supplement by adding new or amended notifications and deleting notifications no longer in effect.				

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	Federal Register citation
CHINA, PEOPLE'S REPUBLIC OF.	Chinese Academy of Engineering Physics (aka Ninth Academy, including the Southwest Institutes of: Applied Electronics, Chemical Materials, Electronic Engineering, Explosives and Chemical Engineering, Environmental Testing, Fluid Physics, General Designing and Assembly, Machining Technology, Materials, Nuclear Physics and Chemistry, Structural Mechanics; Research and Applications of Special Materials Factory; Southwest Computing Center (all of preceding located in or near Mianyang, Sichuan Province); Institute of Applied Physics and Computational Mathematics, Beijing; and High Power Laser Laboratory, Shanghai).	For all items subject to the EAR.	Case-by-case basis	62 FR 35334, 6/30/97.
INDIA	Advanced Fuel Fabrication Facility, Department of Atomic Energy (DAE), Tarapur.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Aerial Delivery Research and Development Establishment (ADRDE), Defence Research and Development Organization (DRDO), Agra.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Aeronautical Development Agency, Ministry of Defense, Bangalore.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Aeronautical Development Establishment (ADE), Defence Research and Development Organization (DRDO), Bangalore.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Aerospace Division, Hindustan Aeronautics Limited (HAL), Bangalore.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Ambajhari Ordnance Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Ambarnath Machine Tool Prototype Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Ambarnath Ordnance Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Ammonium Perchlorate Experimental Plant, Indian Space Research Organization (ISRO), Department of Space, Alwaye.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Armament Research and Development Establishment (ARDE), Defence Research and Development Organization (DRDO), Pune.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Aruvankadu Cordite Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Aspara Research Reactor, Bhabha Atomic Research Centre (BARC), Department of Atomic Energy (DAE), Trombay, suburban city of Mumbai (formerly Bombay).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Atomic Energy Commission (AEC) located in Mumbai (formerly Bombay) and subordinate entities specifically listed in this Supplement.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Atomic Energy Regulatory Board (AERB), Mumbai (formerly Bombay).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	The Atomic Minerals Division (AMD), Department of Atomic Energy (DAE), Hyderabad.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	Federal Register citation
	AURO Engineering, Pondicherry	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Avadi Combine Engine Plant, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Avadi Heavy Vehicle Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Avadi Ordnance Clothing Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Baroda Ammonia Plant, (collocated with the Baroda Heavy Water Production Facility), Gujarat Fertilizers, Baroda.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Baroda Heavy Water Production Facility, Heavy Water Board, Department of Atomic Energy (DAE), Baroda.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Beryllium Machining Facility, Indian Space Research Organization (ISRO), and Department of Atomic Energy (DAE), Mumbai (formerly Bombay).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Bhabha Atomic Research Center (BARC), Department of Atomic Energy (DAE), Trombay, suburban city of Mumbai (formerly Bombay).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	62 FR 35334, 6/30/97. [Insert: Federal Register Cite and date of publication].
	Bharat Dynamics Limited, Bhanur and Hyderabad.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Bharat Earth Movers Limited (BEML), Bangalore.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Bharat Electronics Limited (BEL), Bangalore, Ghaziabad, and Hyderabad.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	62 FR 26922, 5/16/97, 62 FR 51369, 10/1/97. [Insert: Federal Register Cite and date of publication].
	Bharat Heavy Electrical Limited (BHEL), Trichy (Tiruchirapalli), Hyderabad, Hardwar, New Delhi, and Ranipet.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Bhatin Uranium Mine and Mill, Uranium Corporation of India, Ltd. (UCIL), Bhatin.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Bhusawal Ordnance Factory, Avadi Combine Engine Plant, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Board of Radiation and Isotope Technology (BRIT), Department of Atomic Energy (DAE), Mumbai (formerly Bombay).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Boron Enrichment Plant, Bhabha Atomic Research Centre (BARC), Department of Atomic Energy (DAE), Trombay, suburban city of Mumbai (formerly Bombay).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Central Manufacturing Technology Institute, a.k.a. Central Machine Tool Institute, Bangalore.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Central Workshops, Bhabha Atomic Research Centre (BARC), Department of Atomic Energy (DAE), Trombay, suburban city of Mumbai (formerly Bombay).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	The Centre for Advanced Technology (CAT), Department of Atomic Energy (DAE), Indore.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Centre for Aeronautical Systems Studies and Analysis (CASSA), Defence Research and Development Organization (DRDO), Bangalore.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	Federal Register citation
	Centre for the Compositional Characterization of Materials, Bhabha Atomic Research Centre (BARC), Department of Atomic Energy (DAE), Hyderabad.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Centre for Development of Advanced Computing, Department of Electronics, Pune.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Ceramic Fuels Fabrication Plant, Nuclear Fuel Complex (NFC), Department of Atomic Energy (DAE), Hyderabad.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Chanda Ammunition Loading Plant, Avadi Combine Engine Plant, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Chanda Ordnance Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Chandigarh Ordnance Cable Factory, Avadi Combine Engine Plant, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Chandigarh Ordnance Parachute Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Cirus Reactor, Bhabha Atomic Research Centre (BARC), Department of Atomic Energy (DAE), Mumbai (formerly Bombay).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Combat Vehicle Research and Development Establishment (CVRDE), Defence Research and Development Organization (DRDO), Chennai (formerly Madras).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Construction Services and Estate Management Group, Directorate of Purchase and Stores (DPS), Department of Atomic Energy (DAE), Mumbai (formerly Bombay).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Cossipore Gun and Shell Factory, Avadi Combine Engine Plant, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Defence Bio-Engineering and Electro-Medical Laboratory (DEBEL), Defence Research and Development Organization (DRDO), Bangalore.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Defence Electronics Applications Laboratory (DEAL), Defence Research and Development Organization (DRDO), Dehra Dun.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Defence Electronics Research Laboratory (DERL or DLRL), Defence Research and Development Organization (DRDO), Hyderabad.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Defence Food Research Laboratory (DFRL), Defence Research and Development Organization (DRDO), Mysore.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Defence Institute of Fire Research (DIFR), Defence Research and Development Organization (DRDO), Delhi.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Defence Institute of Physiology and Allied Sciences (DIPAS), Defence Research and Development Organization (DRDO), Delhi.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	Federal Register citation
	Defence Institute of Psychological Research (DIPR), Defence Research and Development Organization (DRDO), New Delhi.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Defence Institute of Workstudy (DIWS), Defence Research and Development Organization (DRDO), Mussoorie.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Defence Laboratory (DL), Defence Research and Development Organization (DRDO), Jodhpur.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Defence Materials and Store Research and Development Establishment (DMSRDE), Defence Research and Development Organization (DRDO), Kanpur.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Defence Metallurgical Research Laboratory (DMRL), Defence Research and Development Organization (DRDO), Hyderabad.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Defence Research and Development Establishment (DRDE), Defence Research and Development Organization (DRDO), Gwalior.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Defence Research and Development Laboratory (DRDL), Defence Research and Development Organization (DRDO), Hyderabad.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Defence Research and Development Organization (DRDO) located in New Delhi and subordinate entities specifically listed in this Supplement.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Defence Research and Development Unit (DRDU), Defence Research and Development Organization (DRDO), Calcutta.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Defence Research Laboratory (DRL), Defence Research and Development Organization (DRDO), Tezpur.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Defence Science Centre (DSC), Defence Research and Development Organization (DRDO), New Delhi.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Defence Terrain Research Laboratory (DTRL), Defence Research and Development Organization (DRDO), New Delhi.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Dehra Dun Opto-Electronics Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Dehra Dun Ordnance Factory, Dehra Dun Opto-Electronics Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Dehu Road Ordnance Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Department of Defense Production and Supplies and subordinate entities specifically listed in this Supplement.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Department of Space located in Bangalore and subordinate entities specifically listed in this Supplement.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Department of Atomic Energy (DAE) located in Mumbai (formerly Bombay) and subordinate entities specifically listed in this Supplement.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	Federal Register citation
	Dhruva Reactor, Bhabha Atomic Research Centre (BARC), Department of Atomic Energy (DAE), Mumbai (formerly Bombay).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Directorate of Purchase and Stores (DPS), Department of Atomic Energy (DAE), Mumbai (formerly Bombay).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Dum Dum Ordnance Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Electronics and Radar Development Establishment (ERDE or LRDE), Defence Research and Development Organization (DRDO), Bangalore.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Electronics Corporation of India, Ltd. (ECIL), Hyderabad.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Engine Division, Hindustan Aeronautics Limited (HAL), Bangalore.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Explosive Research and Development Laboratory (ERDL), Defence Research and Development Organization (DRDO), Pune.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Fast Breeder Test Reactor (FBTR), Indira Gandhi Centre for Atomic Research (IGCAR), Department of Atomic Energy (DAE), Kalpakkam.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Fast Reactor Fuel Reprocessing Plant (FRFRP), Indira Gandhi Centre for Atomic Research (IGCAR), Department of Atomic Energy (DAE), Kalpakkam.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Ferrodie Private Limited (FPL), Thane.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Gas Turbine Research Establishment (GTRE), Defence Research and Development Organization (DRDO), Bangalore.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	General Services Organization, Directorate of Purchase and Stores (DPS), Department of Atomic Energy (DAE), Kalpakkam.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Godrej & Boyce Mfg., Co., Ltd., Precision Equipment Division (PED) and Tool Room Division, Mumbai (formerly Bombay).	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Hazira Ammonia Plant, (collocated at the Hazira Heavy Water Production Facility) Krishak Bharati Cooperative, Ltd., Hazira.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Hazira Heavy Water Production Facility, Heavy Water Board, Department of Atomic Energy (DAE), Hazira.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Hazratpur Ordnance Equipment Factory, Dum Dum Ordnance Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Heavy Water Board, Department of Atomic Energy (DAE), Mumbai (formerly Bombay).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Heavy Water Upgrade Plant, Kakrapar Atomic Power Station (KAPS), Nuclear Power Corporation of India, Ltd. (NPCIL), Kakrapar.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Indian Institute of Science (IIS), Departments of: Aerospace Engineering and Space Technology Cell, Bangalore.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Indian Institute of Technology (IIT), Departments of: Aerospace Engineering and Space Technology Cell, Chennai (formerly Madras).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	Federal Register citation
	Indian Institute of Technology (IIT), Departments of: Physics, Aerospace Engineering, and Space Technology Cell, Mumbai (formerly Bombay).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	India Minerals Separation Plants, Indian Rare Earths, Ltd., (IREL), Chhatrapur, Orissa, and Chavara.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	62 FR 35335, 6/30/97. [Insert: Federal Register Cite and date of publication].
	Indian Rare Earths, Ltd., (IREL), Mumbai (formerly Bombay).	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	62 FR 35335, 6/30/97. [Insert: Federal Register Cite and date of publication].
	Indian Space Research Organization (ISRO), Department of Space, Bangalore.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Indira Gandhi Center for Atomic Research (IGCAR), Kalpakkam.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	62 FR 35334, 6/30/97. [Insert: Federal Register Cite and date of publication].
	Institute of Armament Technology (IAT), Defense Research and Development Organization (DRDO), Pune.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Institute of Mathematical Sciences, Department of Atomic Energy (DAE), Chennai (formerly Madras).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Institute of Physics, Department of Atomic Energy (DAE), Bhubaneshwar.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Institute for Systems Studies and Analyses (ISSA), Defense Research and Development Organization (DRDO), Delhi.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Instruments Research and Development Establishment (IRDE), Defense Research and Development Organization (DRDO), Dehra Dun.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Interim Test Range (ITR), a.k.a. Meteorological Rocket Station, Indian Space Research Organization (ISRO), Department of Space, Balasore.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Interuniversity Consortium of DAE Facilities, Department of Atomic Energy (DAE), Calcutta, Indore, and Mumbai (formerly Bombay).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Ishapore Metal and Steel Factory, Dum Dum Ordnance Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Ishapore Rifle Factory, Dum Dum Ordnance Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	ISRO Inertial Systems Unit (IISU), Indian Space Research Organization (ISRO), Department of Space, Thiruvananthapuram.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Itarsi Ordnance Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Jabalpur Gray Iron Foundry, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Jabalpur Gun Carriage Factory, Itarsi Ordnance Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Jaduguda Uranium Mine and Mill, Uranium Corporation of India, Ltd. (UCIL), Jaduguda.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Kaiga Atomic Power Project (KAPP), The Nuclear Power Corporation of India, Ltd. (NPCIL), Kaiga.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	Federal Register citation
	Kakrapar Atomic Power Station (KAPS), The Nuclear Power Corporation of India, Ltd. (NPCIL), Kakrapar.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Kalpakkam Reprocessing Plant (KARP), a.k.a. Kalpakkam Fuel Reprocessing Plant, Indira Gandhi Centre for Atomic Research (IGCAR), Department of Atomic Energy (DAE), Kalpakkam.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Kakrapar Atomic Power Station (KAPS), Nuclear Power Corporation of India, Ltd. (NPCIL), Kakrapar.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Kamini Research Reactor, Indira Gandhi Centre for Atomic Research (IGCAR), Department of Atomic Energy (DAE), Kalpakkam.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Kanpur Field Gun Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Kanpur Ordnance Equipment Factory, Kanpur Field Gun Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Kanpur Ordnance Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Kanpur Ordnance Parachute Factory, Kanpur Field Gun Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Kanpur Small Arms Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	Insert: Federal Register Cite and date of publication].
	Katni Ordnance Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Khamaira Ordnance Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Kirkee Ammunition Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Kirkee High Explosives Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Kirloskar Brothers, Ltd. (KB), Pune	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Kota Heavy Water Production Facility, Heavy Water Board, Department of Atomic Energy (DAE), Kota.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Kundankulam Atomic Power Project, The Nuclear Power Corporation of India, Ltd. (NPCIL), Kundankulam.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Larsen & Toubro, Ltd. (L&T), Hazira Works, Hazira.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Liquid Propulsion Systems Centre, Indian Space Research Organization (ISRO), Department of Space, Bangalore.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Liquid Propulsion Systems Centre, Indian Space Research Organization (ISRO), Department of Space, Thiruvananthapuram or Valiamala.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	Federal Register citation
	Liquid Propulsion Test Facility, Indian Space Research Organization (ISRO), Department of Space, Mahendragiri.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Machine Tool Aids & Reconditioning (MTAR), Hyderabad.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Madras Atomic Power Station (MAPS), The Nuclear Power Corporation of India, Ltd. (NPCIL), Kalpakkam.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Manuguru Heavy Water Production Facility, Heavy Water Board, Department of Atomic Energy (DAE), Manuguru.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Medak Grey Iron Foundry, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Medak Ordnance Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Mehta Research Institute of Maths and Math Physics, Department of Atomic Energy (DAE), Allahabad.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Meteorological Rocket Station, a.k.a. Interim Test Range (ITR), Indian Space Research Organization (ISRO), Department of Space, Balasore.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	The Mineral Sand Separation Complex, a.k.a. Orissa Sands Complex (OSCOM), India Rare Earths, Ltd. (IREL), Department of Atomic Energy (DAE), Chhatrapur in the Gunjan District of Orissa.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Minerals Recovery Plant, India Rare Earths, Ltd. (IREL), Chavara.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Misrha Dhatu Nigam, Ltd. (MIDHANI), Hyderabad.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	The Missile Research and Development Complex, Defence Research and Development Laboratory (DRDL), Defence Research and Development Organization (DRDO), Imarat, Hyderabad.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Muradnagar Ordnance Factory, Kirkee High Explosives Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Nangal Heavy Water Production Facility, Heavy Water Board, Department of Atomic Energy (DAE), Nangal.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Narora Atomic Power Station (NAPS), The Nuclear Power Corporation of India, Ltd. (NPCIL), Bullandshahr in Uttar Pradesh.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Narwapahar Uranium Mine and Mill, Uranium Corporation of India, Ltd. (UCIL), Department of Atomic Energy (DAE), Narwapahar.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	National Aerospace Laboratory, Bangalore.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	National Test Range, Defence Research and Development Organization (DRDO), Baliabad.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	National Trisonic Aerodynamic Facility, National Aerospace Laboratory, Bangalore.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Naval Chemical and Metallurgical Laboratory (NCML), Defence Research and Development Organization (DRDO), Mumbai (formerly Bombay).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	Federal Register citation
	Naval Physical and Oceanographic Laboratory (NPOL), Defence Research and Development Organization (DRDO), Cochin.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Naval Science and Technological Laboratory (NSTL), Defence Research and Development Organization (DRDO), Vishakhapatnam.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	New Zirconium Sponge Plant, Nuclear Fuel Complex (NFC), Department of Atomic Energy (DAE), Hyderabad.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	The Nuclear Power Corporation of India, Ltd. (NPCIL), Mumbai (formerly Bombay).	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Nuclear Fuel Complex (NFC), Department of Atomic Energy (DAE), Hyderabad.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Nuclear Science Centre (NSC), New Delhi.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Ordnance Factories Staff College, Nagpur (Ambajhari).	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Ordnance Factories Training Institutes, Ishapore, Kanpur, Jabalpur (Kharmiar), Ambarnath, Ambajahari.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Ordnance Factory Board and subordinate entities specifically listed in this Supplement.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Orissa Sands Complex (OSCOM), a.k.a. The Mineral Sand Separation Complex India Rare Earths, Ltd. (IREL), Department of Atomic Energy (DAE), Chhatrapur in the Gunjan District of Orissa.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Physical Research Laboratory (PRL), Department of Space, Ahmadabad.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Plutonium Reprocessing Plant, a.k.a. Trombay Reprocessing Plant, Bhabha Atomic Research Centre (BARC), Department of Atomic Energy (DAE), Trombay, suburban city of Mumbai (formerly Bombay).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Precision Controls, Chennai (formerly Madras).	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	PREFRE Reprocessing Plant, Department of Atomic Energy (DAE), Tarapur.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Proof and Experimental Establishment, Defence Research and Development Organization (DRDO), Chandipore.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Prototype Fast Breeder Reactor (PFBR), Indira Gandhi Centre for Atomic Research (IGCAR), Department of Atomic Energy (DAE), Kalpakkam.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Purinima Facility, Bhabha Atomic Research Centre (BARC), Department of Atomic Energy (DAE), Trombay, suburban city of Mumbai (formerly Bombay).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Rajasthan Atomic Power Station (RAPS), and Rajasthan Atomic Power Project, The Nuclear Power Corporation of India, Ltd. (NPCIL), Department of Atomic Energy (DAE), Rawatbhata.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Rama Krishna Engineering Works (REW), Chennai (formerly Madras).	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	Federal Register citation
	Rare Earth Development Laboratory, a.k.a. Thorium Plant, India Rare Earths, Ltd. (IREL), Department of Atomic Energy (DAE), Trombay, suburban city of Mumbai (formerly Bombay).	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Rare Materials Plant, India Rare Earths, Ltd. (IREL), Department of Atomic Energy (DAE), Mysore.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Research and Development Establishment (Engineers) (R&DE (ENGRS)), Defence Research and Development Organization (DRDO), Pune.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Saha Institute of Nuclear Physics, Department of Atomic Energy (DAE), Calcutta.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Scientific Analysis Group (SAG), Defence Research and Development Organization (DRDO), New Delhi.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Shahjahanpur Ordnance Clothing Factory, Kirkee High Explosives Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Solid Propellant Space Booster Plant (SPROB), Sriharikota Space Centre (SHAR), Indian Space Research Organization (ISRO), Department of Space.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Solid State Physics Laboratory (SSPL), Defence Research and Development Organization (DRDO), New Delhi.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Space Applications Centre (SAC), Indian Space Research Organization (ISRO), Department of Space, Ahmadabad.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Space Physics Laboratory (SPL), Department of Space, Thiruvananthapuram.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Special Materials Plant, Nuclear Fuel Complex (NFC), Department of Atomic Energy (DAE), Hyderabad.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Sriharikota Space Centre (SHAR), Indian Space Research Organization (ISRO), Department of Space, Andhra Pradesh.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Talcher Ammonia Plant, (collocated at Talcher Heavy Water Production Facility) Fertilizer Corporation of India, Ltd., Talcher.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Talcher Heavy Water Production Facility, Heavy Water Board, Department of Atomic Energy (DAE), Talcher.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Tarapur Atomic Power Station (TAPS), and Tarapur Atomic Power Project, The Nuclear Power Corporation of India, Ltd. (NPCIL), Department of Atomic Energy (DAE), Tarapur.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Tata Institute of Fundamental Research, Department of Atomic Energy (DAE), Mumbai (formerly Bombay).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Terminal Ballistics Research Laboratory (TBRL), Defence Research and Development Organization (DRDO), Chandigarh.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Thal-Vaishet Ammonia Plant, (collocated at Thal-Vaishet Heavy Water Production Facility), Rashtriya Chemicals & Fertilizers, Thal-Vaishet in Maharashtra.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Thal-Vaishet Heavy Water Production Facility, Heavy Water Board, Department of Atomic Energy (DAE), Thal-Vaishet in Maharashtra.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Thorium Plant, India Rare Earths, Ltd. (IREL), Department of Atomic Energy (DAE), Chhatrapur.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	Federal Register citation
	Thumba Equatorial Rocket Launching Station, Indian Space Research Organization (ISRO), Department of Space.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Tiruchchirappalli Heavy Alloy Penetrator Project, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Tiruchchirappalli Ordnance Factory, Kirkee High Explosives Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Titlagarh Ammunition Plant, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Trombay Reprocessing Plant, a.k.a. Plutonium Reprocessing Plant, Bhabha Atomic Research Centre (BARC), Department of Atomic Energy (DAE), Trombay, suburban city of Mumbai (formerly Bombay).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Tuticorin Ammonia Plant, (collocated at Tuticorin Heavy Water Production Facility), Southern Petrochemical Industries Corporation, Tuticorin.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Tuticorin Heavy Water Production Facility, Heavy Water Board, Department of Atomic Energy (DAE), Tuticorin.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Uranium Conversion Plant, Bhabha Atomic Research Centre (BARC), Department of Atomic Energy (DAE), Trombay, suburban city of Mumbai (formerly Bombay).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Uranium Corporation of India, Ltd. (UCIL), Department of Atomic Energy (DAE), Jaduguda.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Uranium Enrichment Plant, Bhabha Atomic Research Centre (BARC), Department of Atomic Energy (DAE), Trombay, suburban city of Mumbai (formerly Bombay).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Uranium Fuel Assembly Plant, Nuclear Fuel Complex (NFC), Department of Atomic Energy (DAE), Hyderabad.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Uranium Mine and Mill, Uranium Corporation of India, Ltd. (UCIL), Narwapahar, Jaduguda, and Bhatin.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Uranium Mine, Uranium Corporation of India, Ltd. (UCIL), Turamdih.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Uranium Recovery Plant, Fertilizers and Chemicals Travancore (FACT), Uranium Corporation of India, Ltd. (UCIL), Department of Atomic Energy (DAE), Cochin.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Uranium Recovery Plant, Uranium Corporation of India, Ltd. (UCIL), Department of Atomic Energy (DAE), Mosabini (a.k.a. Masabeni).	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Uranium Recovery Plant, Uranium Corporation of India, Ltd. (UCIL), Department of Atomic Energy (DAE), Rakha.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Uranium Recovery Plant, Uranium Corporation of India, Ltd. (UCIL), Department of Atomic Energy (DAE), Surda (a.k.a. Surdat).	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	Federal Register citation
	Varangaon Ordnance Factory, Tiruchchirappalli Heavy Alloy Penetrator Project, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	The Variable Energy Cyclotron Centre (VECC), Department of Atomic Energy (DAE), Calcutta.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Vehicles Research and Development Establishment, Defence Research and Development Organization (DRDO), Ahmednagar.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Vikram Sarabhai Space Centre (VSSC), Indian Space Research Organization (ISRO), Department of Space, Thiruvananthapuram.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Walchandnagar Industries, Ltd. (WIL), Nadu Desarai and Mahad.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Zirconium Fabrication Plant, Nuclear Fuel Complex (NFC), Department of Atomic Energy (DAE), Hyderabad.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Zirconium Oxide Plant, India Rare Earths Ltd. (IREL), Department of Atomic Energy (DAE), Manavalakuruchi.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
ISRAEL	Ben Gurion University, Israel	For computers between 2,000 and 7,000 Mtops.	Case-by-case basis	62 FR 4910, 2/3/97.
	Nuclear Research Center at Negev Dimona, Israel.	For all items subject to the EAR.	Case-by-case basis	62 FR 35334, 6/30/97.
PAKISTAN	Abdul Qader Khan Research Laboratories, a.k.a. Khan Research Laboratories (KRL), a.k.a. Engineering Research Laboratories (ERL), Kahuta.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Aerospace Institute, Space and Upper Atmospheric Research Commission (SUPARCO), Islamabad.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Al Technique Corporation of Pakistan, Ltd.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Allied Trading Co	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	ANZ Importers and Exporters, Islamabad	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Armed Forces Institute of Pathology—Rawalpindi Laboratory.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Atomic Energy Minerals Centre, Pakistan Atomic Energy Commission (PAEC), Lahore.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Baghalchur Uranium Mine, Pakistan Atomic Energy Commission (PAEC), Baghalchur.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Center for Advanced Molecular Biology, Lahore.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Center for Nuclear Studies, Pakistan Atomic Energy Commission (PAEC), and Pakistan Institute of Nuclear Science and Technology (PINSTECH), Islamabad.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Chaklala Defense Science and Technology Organization (DESTO).	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Chasma Fuel Fabrication Plant, Chasma Nuclear Power Plant (CHASNUPP), Pakistan Atomic Energy Commission (PAEC), Kundian.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	Federal Register citation
	Chasma Nuclear Power Plant (CHASNUPP), Pakistan Atomic Energy Commission (PAEC), Kundian.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Combat Development Directorate (CDD)	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Computer Center, Space and Upper Atmospheric Research Commission (SUPARCO), Karachi.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Computer and Development Division, KANUPP Institute of Nuclear Power Engineering (KINPOE), Pakistan Atomic Energy Commission (PAEC).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Computer Training Center, Pakistan Atomic Energy Commission (PAEC) and Pakistan Institute of Nuclear Science and Technology (PINSTECH), Islamabad.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Control System Laboratories, Space and Upper Atmospheric Research Commission (SUPARCO).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Daud Khel Chemical Plant, Defense Science and Technology Organization (DESTO), Lahore.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Defence Science and Technology Organization (DESTO) located in Rawalpindi and subordinate entities specifically listed in this Supplement.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Dera Ghazi Khan Uranium Mine, Pakistan Atomic Energy Commission (PAEC), Dera Ghazi Khan.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Directorate of Technical Development, Pakistan Atomic Energy Commission (PAEC).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Directorate of Technical Equipment, Pakistan Atomic Energy Commission (PAEC).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Directorate of Technical Procurement, Pakistan Atomic Energy Commission (PAEC).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Engineering and Technical Services, Islamabad.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Engineering Research Laboratories (ERL), a.k.a. Abdul Qader Khan Research Laboratories, a.k.a. Khan Research Laboratories (KRL), Kahuta.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Flight Test Range, Space and Upper Atmospheric Research Commission (SUPARCO), Sonmiani Beach.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Gadwal Ammunition Plant	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Gadwal Uranium Enrichment Plant	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Ghulam Ishaq Khan Institute of Technology, Topai.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Golra Ultracentrifuge Plant, Golra	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Goth Macchi Nitrogen Fertilizer Plant, Sadiqabad.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Hard Rock Division, Pakistan Atomic Energy Commission (PAEC), Peshawar.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	Federal Register citation
	Haripur Nitrogen Fertilizer Plant, Hazara	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Havelian Explosives and Ammunition Plant.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Hawkes Bay Depot, Pakistan Atomic Energy Commission (PAEC).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Heavy Water Production Plant, KANUPP, Pakistan Atomic Energy Commission (PAEC), Karachi.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	High Technologies, Ltd., Islamabad	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Institute of Nuclear Power, Pakistan Atomic Energy Commission (PAEC), Islamabad.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Instrumentation Laboratories, Space and Upper Atmospheric Research Commission (SUPARCO), Karachi.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Issa Khel/Kubul Kel Uranium Mines and Mills, Pakistan Atomic Energy Commission (PAEC), Miniawali District.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Karachi CBW Research Institute, University of Karachi's Husein Ebrahim Jamal Research Institute of Chemistry (HEJRIC).	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Karachi CW & BW Warfare R&D Laboratory, Defense Science and Technology Organization (DESTO).	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Karachi Naval Base and Naval Hqs. And Dockyard.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Karachi Nuclear Power Plant (KANUPP), Pakistan Atomic Energy Commission (PAEC), Karachi.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Karachi Superphos Fertilizer Plant, Al Noor.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	KANUPP Institute of Nuclear Power Engineering (KINPOE), Pakistan Atomic Energy Commission (PAEC), Karachi.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Khan Research Laboratories (KRL) a.k.a. Abdul Qader Khan Research Laboratories, a.k.a. Engineering Research Laboratories (ERL), Kahuta.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	62 FR 35334, 6/30/97 [Insert: Federal Register Cite and date of publication].
	Khewra Soda Ash Plant	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Khushab Reactor, Pakistan Atomic Energy Commission (PAEC), Khushab, Punjab.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Lahore Weapons Plant, PEC	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Lastech Associates, Islamabad	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Machinery Master Enterprises, Islamabad	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Maple Engineering Pvt. Ltd. Consultants, Importers and Exporters.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Material Research Division, Space and Upper Atmospheric Research Commission (SUPARCO).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	Federal Register citation
	Mineral Sands Program, Pakistan Atomic Energy Commission (PAEC), Karachi.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Mirpur Nitrogen Fertilizer Plant, Mathelo	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Modern Engineering Services, Ltd., Islamabad.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Multan Chemical Fertilizer Plant	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Multan Heavy Water Production Facility, Pakistan Atomic Energy Commission (PAEC), Multan Division, Punjab.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	National Development Centre	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	62 FR 35335, 6/30/97. [Insert: Federal Register Cite and date of publication].
	National Engineering Service of Pakistan, Chasma Nuclear Power Plant (CHASNUPP), Pakistan Atomic Energy Commission (PAEC), Kundian.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	National Institute of Biotechnology and Genetic Engineering, Faisalabad.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	New Laboratories, Pakistan Institute for Nuclear Science and Technology (PINSTECH), Rawalpindi.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Nuclear Track Detection Center, a.k.a. Solid State Nuclear Track Detection Laboratory, Pakistan Institute for Nuclear Science and Technology (PINSTECH).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Orient Importers and Exporters, Islamabad.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Pakistan Atomic Energy Commission (PAEC) located in Islamabad and subordinate entities specifically listed in this Supplement.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Pakistan Institute for Nuclear Science and Technology (PINSTECH), Islamabad.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	62 FR 35334, 6/30/97. [Insert: Federal Register Cite and date of publication].
	Pakistan Ordnance Factories	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	PARR–1 Research Reactor, Pakistan Institute for Nuclear Science and Technology (PINSTECH).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	PARR–2 Research Reactor, Pakistan Institute for Nuclear Science and Technology (PINSTECH).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	People's Steel Mills, Karachi	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Pilot Reprocessing Plant, New Laboratories, Pakistan Institute for Nuclear Science and Technology (PINSTECH).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Prime International	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Quality Control and Assurance Unit, Space and Upper Atmospheric Research Commission (SUPARCO).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Rocket Bodies Manufacturing Unit, Space and Upper Atmospheric Research Commission (SUPARCO).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Saniwal Ammunition Plant	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Science and Engineering Services Directorate, Pakistan Atomic Energy Commission (PAEC).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	Federal Register citation
	Scientific and Technical Tech., Ltd., Islamabad.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Sihala Ultracentrifuge Plant, Sihala	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Solid Composite Propellant Unit, Space and Upper Atmospheric Research Commission (SUPARCO).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Solid State Nuclear Track Detection Laboratory, a.k.a. Nuclear Track Detection Center, Pakistan Institute for Nuclear Science and Technology (PINSTECH).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Space and Atmospheric Research Center, Space and Upper Atmospheric Research Commission (SUPARCO), Karachi.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Space and Upper Atmospheric Research Commission (SUPARCO) and subordinate entities specifically listed in this Supplement.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Space Research Council and subordinate entities specifically listed in this Supplement.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Static Test Unit, Space and Upper Atmospheric Research Commission (SUPARCO), Karachi.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication]
	Technical Services, Islamabad	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	The Tempest Trading Company, Islamabad.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Unique Technical Promoters	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Uranium Conversion Facility, Pakistan Atomic Energy Commission (PAEC), Islamabad.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Wah Chemical Product Plant	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Wah Munitions Plant, a.k.a. Explosives Factory, Pakistan Ordnance Factories (POF).	For all items subject to the EAR having a classification other than EAR99.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
RUSSIA	All-Russian Scientific Research Institute of Technical Physics, (aka VNIITF, Chelyabinsk-70, All-Russian Research Institute of Technical Physics, ARITP, Russian Federal Nuclear Center) located in either Snezhinsk or Kremlev.	For all items subject to the EAR.	Case-by-case basis	62 FR 35334, 6/30/97.
	All-Union Scientific Research Institute of Experimental Physics, (aka VNIIEF, Arzamas-16, Russian Federal Nuclear Center, All Russian Research Institute of Experimental Physics, ARIEP, Khariton Institute) located in either Snezhinsk or Kremlev.	For all items subject to the EAR.	Case-by-case basis	62 FR 35334, 6/30/97.
	Baltic State Technical University, 1/21, 1-ya Krasnoarmeiskaya Ul., 198005, St. Petersburg.	For all items subject to the EAR (see § 744.10 of the EAR).	Presumption of denial.	63 FR 40363, 7/29/98.
	Europalace 2000, Moscow	For all items subject to the EAR (see § 744.10 of the EAR).	Presumption of denial.	63 FR 40363, 7/29/98.
	Glavkosmos, 9 Krasnoproletarskaya st., 103030 Moscow.	For all items subject to the EAR (see § 744.10 of the EAR).	Presumption of denial.	63 FR 40363, 7/29/98.
	Grafit (aka State Scientific Research Institute of Graphite or NIIGRAFIT), 2 Ulitsa Elektrodnaya, 111524, Moscow.	For all items subject to the EAR (see § 744.10 of the EAR).	Presumption of denial.	63 FR 40363, 7/29/98.

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	Federal Register citation
	INOR Scientific Center, Moscow, Russia	For all items subject to the EAR (see § 744.10 of the EAR).	Presumption of denial.	63 FR 40363, 7/29/98.
	Ministry for Atomic Power of Russia (any entities, institutes, or centers associated with) located in either Snezhinsk or Kremlev.	For all items subject to the EAR.	Case-by-case basis	62 FR 35334, 6/30/97.
	MOSO Company, Moscow	For all items subject to the EAR (see § 744.10 of the EAR).	Presumption of denial.	63 FR 40363, 7/29/98.
	Polyus Scientific Production Association, 3 Ulitsa Vvedenskogo, 117342, Moscow.	For all items subject to the EAR (see § 744.10 of the EAR).	Presumption of denial.	63 FR 40363, 7/29/98.

Dated: November 13, 1998.

R. Roger Majak,

Assistant Secretary for Export Administration.

[FR Doc. 98–30877 Filed 11–13–98; 4:10 pm]

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Part III

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products: Energy Conservation Standards for Clothes Washers; Proposed Rule

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE–RM–94–403]

RIN 1904–AA67

Energy Conservation Program for Consumer Products: Energy Conservation Standards for Clothes Washers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Supplemental Advance Notice of Proposed Rulemaking.

SUMMARY: The Energy Policy and Conservation Act, as amended (EPCA or Act), requires the Department of Energy (DOE or Department) to consider amending the energy conservation standards for certain major household appliances. This supplemental advance notice of proposed rulemaking (ANOPR) addresses the requirement of EPCA to consider amending the energy conservation standards for clothes washers no later than five years after the date of publication of the previous final rule (May 14, 1991).

The purpose of this supplemental ANOPR is to provide interested persons with an opportunity to comment on:

First, the product classes that the Department is planning to analyze;

Second, the analytical framework, models (e.g., the Government Regulatory Impact Model (GRIM)), and tools (e.g., a Monte Carlo sampling methodology, and life-cycle-cost (LCC) and national energy savings (NES) spreadsheets) that the Department expects to use in performing analyses of the impacts of standards; and

Third, the results of preliminary analyses for life-cycle-cost, payback and national energy savings contained in the Preliminary Technical Support Document: Energy Efficiency Standards for Consumer Products: Clothes Washers (TSD) and summarized in this supplemental ANOPR.

DATES: Written comments must be received by February 2, 1999. The Department requests 10 copies of the written comments and, if possible, a computer disk. The Office of Codes and Standards is currently using WordPerfect 6.1.

A public hearing will be held on December 14 (1:00–4:00 p.m.) and 15 (9:00 a.m.–4:00 p.m.), 1998. See **SUPPLEMENTARY INFORMATION** for further details.

ADDRESSES: Written comments should be submitted to: U.S. Department of Energy, Attn: Brenda Edwards-Jones, Office of Energy Efficiency and Renewable Energy, ''Energy Efficiency Standards for Consumer Products,'' (Docket No. EE–RM–94–403), EE–431, Forrestal Building, 1000 Independence Avenue, SW, Room 1J–018, Washington, D.C. 20585, (202) 586–9127.

The public hearing will be held at the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue SW, Room 1E–245, Washington, D.C. 20585.

Copies of the Preliminary Technical Support Document: Energy Efficiency Standards for Consumer Products: Clothes Washers (TSD) may also be obtained from: U.S. Department of Energy, Office of Codes and Standards, 1000 Independence Avenue, SW, Rm 1J–018, Washington, D.C. 20585–0121, (202) 586–9127.

Public Information: The public may access the Freedom of Information Reading Room, located at the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW, Room 1E–190, Washington, D.C. 20585 between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, (except Federal holidays). Call (202) 586–6020 for information.

For more information concerning public participation in this rulemaking proceeding, see section IV, ''Public Comment Procedures,'' of this document.

FOR FURTHER INFORMATION CONTACT: Bryan Berringer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–431, 1000 Independence Avenue, SW, Washington, D.C. 20585–0121, (202) 586–0371, E-mail: Bryan.Berringer@EE.DOE.GOV

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I. Introduction

A. Authority

Part B of Title III of the Energy Policy and Conservation Act, Public Law 94–163, as amended by the National Energy Conservation Policy Act, Public Law 95–619, the National Appliance Energy Conservation Act of 1987, Public Law 100–12, the National Appliance Energy Conservation Amendments of 1988, Public Law 100–357, and the Energy Policy Act of 1992, Public Law 102–486 (the Act or EPCA), created the Energy Conservation Program for Various Consumer Products other than Automobiles. 42 U.S.C. 6291–6309.

The National Appliance Energy Conservation Act of 1987 amended the Act to impose prescriptive standards (design feature requirements) for clothes washers as part of the energy conservation program for consumer products. EPCA, Section 325(g), 42 U.S.C. 6295(g). The design feature requirement that clothes washers shall have an unheated rinse option was effective for appliances manufactured on or after January 1, 1988. The Act required the Department to conduct a rulemaking by January 1, 1990, to determine if the above mentioned standards should be amended. The Act provided that any amendment to the standards would apply to products manufactured three years after the rulemaking. The Final Rule was issued on May 14, 1991, and is effective for products manufactured on or after May 14, 1994 (hereinafter referred to as the May 1991 Final Rule). 56 FR 22279. The Act also requires the Department to conduct a subsequent rulemaking no later than five years after the date of publication of the previous final rule.

Before the Department determines whether or not an energy conservation standard is economically justified, it must first solicit comments on the proposed standard. EPCA, Section 325(p), 42 U.S.C. 6295(p). Any new or amended standard is required to be designed so as to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. EPCA, Section 325(o)(2), 42 U.S.C. 6295(o)(2). After reviewing comments on the proposal, the Department must then determine that the benefits of the standard exceed its burdens based to the greatest extent practicable, on a weighing of the following seven factors:

(1) The economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard;

(2) The savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to result directly from the imposition of the standard;

(3) The total projected amount of energy, or as applicable, water, savings likely to result directly from the imposition of the standard;

(4) Any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

(6) The need for national energy and water conservation; and

(7) Other factors the Secretary considers relevant.

B. Background

1. History

The Department initiated a clothes washer rulemaking to determine if the standards (design feature requirements) imposed by the Act should be amended. The Department published an Advance Notice of Proposed Rulemaking (ANOPR) (53 FR 17712, May 18, 1988), a Notice of Proposed Rulemaking (NOPR) (54 FR 32744, August 9, 1989), and the May 1991 Final Rule. The May 1991 Final Rule mandated performance-based energy conservation standards for clothes washers. The standards specified a minimum energy factor (EF) for two of the five classes of clothes washers (top-loading standard and top-loading compact). The energy conservation standards in the May 1991 Final Rule are effective for products manufactured on or after May 14, 1994.

In the May 1991 Final Rule, the Department announced that it was accelerating the second review of energy efficiency standards for clothes washers because it became aware, after the rulemaking was closed, of a design option (horizontal-axis (H-axis) wash tub in a top-loading washer) in use in Europe that was not included in the proposed rule and upon which no comment was received. The Department did not consider establishing a standard based on the top-loading H-axis design option because this information came to the attention of the Department after the close of the comment period on the proposed rule and thus was not subject to public debate.

On September 28, 1990, the Department published an ANOPR for nine products which included the second review of energy efficiency standards for clothes washers. 55 FR 39624. In response to that notice, a number of energy efficiency advocates and appliance manufacturers requested that the Department delay the second review until a 1995–1996 time frame. The additional time was requested in order to allow manufacturers time to meet the standards in the May 1991 Final Rule which became effective on May 14, 1994, and to fully evaluate new, more energy efficient technologies such as top-loading H-axis clothes washers. This additional time, manufacturers contended, would enable them to provide more meaningful and relevant comments on the next, legislatively required, rulemaking. The Department considered the request, and by letter, dated February 26, 1992, notified the parties requesting the delay that the Department had determined that it would conduct the rulemaking on the later schedule, as requested.

On November 14, 1994, the Department issued an ANOPR to begin the second review of energy efficiency standards for clothes washers, dishwashers and clothes dryers. In this ANOPR, the Department presented the product classes that the Department planned to analyze, the analytical framework and models that the Department expected to use in performing analyses, and issues on which the Department was interested in gathering data. The Department received comments in response to this ANOPR and also collected data from the manufacturers which was compiled by the Association of Home Appliance Manufacturers (AHAM) on May 8, 1995, and July 6, 1995. (AHAM, No. 27 and 38.)

2. Test Procedure

Simultaneous with the rulemaking for clothes washer standards, the Department was also in the process of revising the clothes washer test procedure. The Department needed to address a number of innovative technologies for which there were no test procedures. A number of proposals were published, one on December 22, 1993 (58 FR 67710), and another on March 23, 1995. 60 FR 15330. In its comments to the March, 1995 proposed rule, AHAM requested that DOE adopt

an additional new test procedure, based on current consumer habits, which would be used in considering the revision of the clothes washer energy conservation standards, and would go into effect upon issuance of standards.

On April 22, 1996, the Department issued a supplemental NOPR proposing such a new test procedure, Appendix J1, as well as certain additional revisions to the currently applicable test procedure in Appendix J to Subpart B of 10 CFR Part 430. 61 FR 17589. The supplemental notice was published to seek comments on whether it should adopt the AHAM recommended test procedure with certain changes. The Final Rule, published on August 27, 1997, adopted this recommendation. 62 FR 45484. Appendix J1 of the revised test procedure would go into effect upon issuance of standards. Appendix J1 includes a modified energy factor (MEF) which replaces the EF. Contrasting with the previous EF (Energy Factor) descriptor, the MEF descriptor incorporates clothes dryer energy by consideration of the remaining moisture content (RMC) of clothes leaving the clothes washer. Other substantive differences between the test procedures include using different water temperatures for testing and using cloth loads in J1 and not in J. The issuance of the Final Rule was a major step in accelerating the development of clothes washer standards because it provided the basis upon which the energy and water consumption, as well as the manufacturing costs would be submitted.

3. Process Improvement

During consideration of the fiscal year 1996 appropriations, there was considerable debate about the efficacy of the standards program. The Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1996 included a moratorium on proposing or issuing energy conservation appliance standards for the remainder of Fiscal Year 1996. *See* Pub. L. 104–134. Congress advised DOE to correct the standards-setting process and to bring together stakeholders (such as manufacturers and environmentalists) for assistance. In September 1995, the Department announced a formal effort to consider further improvements to the process used to develop appliance efficiency standards, calling on energy efficiency groups, manufacturers, trade associations, state agencies, utilities and other interested parties to provide input to guide the Department. On July 15, 1996, the Department published a Final Rule: Procedures for Consideration of New or Revised Energy Conservation Standards for Consumer Products (hereinafter referred to as the Process Rule). 61 FR 36974.

The Process Rule outlines the procedural improvements identified by the interested parties. The process improvement effort included a review of the: (1) economic models, such as the Manufacturer Analysis Model and Residential Energy Model; (2) analytical tools, such as the use of a Monte Carlo sampling methodology; and (3) prioritization of future rules. The Process Rule includes the accounting for uncertainty and variability by doing scenario or probability analysis (as detailed in the Process Rule, 10 CFR 430, Subpart C, Appendix A §§ 1(f), 4(d)(2), and 10(f)(1)). In addition, an Advisory Committee on Appliance Energy Efficiency Standards, consisting of a representative group of these interested parties, was established to make recommendations to the Secretary regarding the implementation of the Process Rule.

The clothes washer standards rulemaking is the first rule to be developed under the Process Rule. Although there were two previous ANOPRs, the Department made a commitment to use the Process Rule to the extent possible in the development of the new clothes washer standards. In this supplemental ANOPR, the Department is presenting the framework by which it will develop the standards. The framework reflects improvements and steps detailed in the Process Rule. The rulemaking process is dynamic. If timely new data, models or tools that enhance the development of standards become available, they will be incorporated into the rulemaking. For example the Advisory Committee has made several recommendations and the Department has proposed responses which are discussed in this supplemental ANOPR.

On November 15, 1996, the Department held a workshop to discuss proposed design options and a preliminary engineering analysis for clothes washers. Two reports were presented: ''Draft Report on the Preliminary Engineering Analysis for Clothes Washers'' and ''Draft Report on Design Options for Clothes Washer'' (Clothes Washer Public Workshop, No. 55 B and C). A number of concerns were raised relating to the application of the Process Rule to the clothes washer rulemaking, including the need for a review of the manufacturing impact analysis model and methodologies, and a review of non-regulatory approaches (Thiele, No. 55L, at 80), whether the manufacturing cost data collected needed to be updated (Topping, No. 55L, at 52), and whether the Department ought to continue relying on the old methods of doing the analysis. (Perlis, No. 55L at 167.)

Responding to comments from the November 1996 workshop concerning the application of the Process Rule to the clothes washer rulemaking, the Department developed an analytical framework for appliance standards rulemaking. It was presented during a clothes washer workshop held on July 23, 1997. The analytical framework describes the different analyses (e.g., the LCC, payback and national impact analyses) to be conducted (*See* Table 1), the method for conducting them, e.g., the use of a new LCC and NES spreadsheet and the relationship between the various analyses. The framework will be tailored to each rulemaking. Therefore, the same procedures will not necessarily be followed in all of the rulemakings. For example, although manufacturing cost data needs to be collected for each rulemaking, the method for collecting the data can be customized to the specific product.

TABLE 1.—CLOTHES WASHER ANALYSES UNDER PROCESS RULE

ANOPR	NOPR	Final rule
Screening Analysis	Revised Pre-ANOPR Analyses (LCC and National Impacts Analyses)	Revise Analyses (LCC and National Impacts Analyses).
Engineering Analysis	Consumer Sub-group Analysis.	
Life-Cycle-Cost Analysis	Industry Cash-flow Analysis (GRIM).	
Preliminary National Impacts Analysis	Manufacturer Impact Analysis.	
	Utility Impact Analysis.	

TABLE 1.—CLOTHES WASHER ANALYSES UNDER PROCESS RULE—Continued

ANOPR	NOPR	Final rule
	Environmental Analysis.	

The Department is in the process of developing two new spreadsheet tools in an effort to meet the objectives of the Process Rule. The first spreadsheet calculates LCC, and payback. The second one calculates national energy savings (NES). Both tools will be tailored for specific products. These spreadsheets and the results of the preliminary analysis were discussed at a clothes washer workshop held on March 11, 1998.

The Department has reviewed the recommendations made by the Advisory Committee on Appliance Energy Efficiency Standards on April 21, 1998. (Advisory Committee, No. 96). These recommendations relate to using the full range of consumer marginal energy rates (CMER) in the LCC analysis (replacing the use of national average energy prices), defining a range of energy price futures for each fuel used in the economic analyses and defining a range of primary energy conversion factors and associated emission reductions, based on the generation displaced by energy efficiency standards for each rulemaking. The Department plans to incorporate the recommendations, when appropriate, into the various rulemaking analyses.

Today's supplemental ANOPR pertains to clothes washers and utilizes the framework described in Section II. Although the November, 1994 ANOPR included clothes dryers and dishwashers, clothes washers are considered a high priority product and have been separated out to accelerate the rulemaking. Comments previously received for the September 28, 1990, ANOPR and the November 1994 ANOPR relative to clothes washers are being addressed in this document, where applicable.

II. Clothes Washers Analyses

This section includes a general introduction to each analysis section and provides a discussion of issues relative to the clothes washer rule.

A. Preliminary Market and Technology Assessment

The preliminary market and technology assessment characterizes the relevant product markets and existing technology options including prototype designs.

1. Market Assessment

a. General. When initiating a standards rulemaking, the Department develops information on the present and past industry structure and market characteristics of the product(s) concerned. This activity consists of both quantitative and qualitative efforts to assess the industry and products based on publicly available information. Issues to be addressed include: (1) manufacturer market share and characteristics; (2) trends in the number of firms; (3) the financial situation of manufacturers; (4) existing non-regulatory efficiency improvement initiatives; and (5) trends in product characteristics and retail markets. The information collected serves as resource material to be used throughout the rulemaking.

b. Product Specific. The Department reviewed existing literature and data sources to get an overall picture of the clothes washer market in the United States. Information was compiled primarily from industry publications (trade journals), government agencies, trade organizations (AHAM) and research reports. The Department gathered the following information: (1) manufacturer market share; (2) historical shipments; (3) washer sales by outlet type; (4) top retailers; (5) price distribution; (6) market saturation; (7) voluntary programs; (8) fuel distribution of water heaters; and (9) gas and electric sales of dryers (brand names). Information relating to consumer impact and voluntary programs also was obtained. The information described is discussed in the sections where it is used in the analysis. The Preliminary TSD provides additional information.

2. Technology Assessment

a. General. Information relative to existing technology options and prototype designs are used as inputs to the screening analysis. In consultation with interested parties, the Department develops a list of design options for consideration. All technologically feasible design options are candidates in this initial assessment.

b. Product Specific. This clothes washer rulemaking analysis was originally performed using the design option approach. In this approach, information is gathered on all possible energy saving design options. The Department gathered design option information from previous clothes washer analyses, trade publications, industry research organizations, product brochures from domestic and foreign manufacturers, and appliance conferences, including the International Appliance Technical Conference (IATC). Features such as high spin speed (allowing for lower remaining moisture content) and automatic fill control became important due to changes in the clothes washer test procedure. AHAM provided additional information on the energy savings potential and viability of these designs. The ''Draft Report on Design Options for Clothes Washers'' and ''Draft Report on the Preliminary Engineering Analysis for Clothes Washers'' provide details on the potential technologies. (Clothes Washer Public Workshop, No. 55B and 55C).

The technology assessment began with a study of the efficiencies of washers currently on the market. To gain greater insight and to begin creating an efficiency distribution of current product offerings, the Department used both Appendix J and J1 test procedures on nine different clothes washers; seven vertical-axis (V-axis) models and two H-axis models. Products from all five major American manufacturers were included. The complete results are given in the Preliminary TSD. The testing program results show a large variation in MEF values are possible for clothes washers with nearly identical EF ratings. The Federal Trade Commission (FTC) and manufacturers (through AHAM) also provided energy efficiency labeling information. Further descriptions of the most current data are provided in the engineering section of the Preliminary TSD.

3. Preliminary Base Case Shipments Forecast

a. General. The Department develops a base case forecast of product shipments in the absence of new standards. This forecast requires an assessment of the impacts of past and existing non-regulatory efforts by manufacturers, utilities and other interested parties. DOE considers information on the actual impacts of such initiatives to date, and also

considers information presented regarding the possible impacts that any existing initiatives might have in the future. Such information could include a demonstration of the steps manufacturers, distribution channels, utilities or others will take to realize such voluntary efficiency improvements.

The base case shipments forecast is used as input to the national impacts analysis, in which a forecast of annual shipments and their weighted average energy efficiency is needed to the year 2030.

b. Product Specific. In order to develop its base case forecast for clothes washer sales the Department reviewed: (1) Federal procurement guidelines; (2) voluntary programs (i.e., utility and consortium educational materials and/or rebates); (3) government and industry demonstration and information programs (e.g., Energy Star Program); and (4) documented discussions with organizations and individuals. Clothes washer sales will be forecasted by efficiency level for the time period of 2003 to 2030. This forecast will be more difficult for the clothes washer rulemaking, because the efficiency factor (EF) was changed to the modified energy factor (MEF). The Department has limited information concerning the energy performance of existing product offerings using the MEF descriptor. Given the vastly different nature of the variables and testing methods of the current J and future J1 test procedures, the EF values cannot be translated to MEF values. In addition, the analysis revealed a rapidly evolving market response to the introduction of new H-axis model clothes washers. In 1997, the WashWise consortium interviewed manufacturers and asked them to estimate the market share of H-axis washers in five years. WashWise is a public/private partnership between Pacific Northwest electric, gas, water and wastewater utilities, appliance manufacturers and local retailers. Their goal is to reduce the use of energy and water by encouraging consumers in Washington, Oregon, Idaho and western Montana to purchase resource-efficient washers. The results showed a large divergence of estimates ranging from a low of 5 percent to a high of 25 percent (*Coming Clean About Resource-Efficient Clothes Washers: An Initial WashWise Program and Market Progress Report-Final Report,* No. E98–003, January 28, 1998). (March 11, 1998 Workshop Material, No. 82 OO).

For the purpose of the base case forecast in the preliminary national impacts analysis, the effect of voluntary programs has been expressed as the percent of new clothes washers sold each year that will have efficiencies corresponding to those of H-axis washers. The H-axis washer is characterized using the data submitted by AHAM for a 35 percent energy reduction from the baseline MEF. The spreadsheet uses disaggregated values (i.e., water heater energy, dryer energy and mechanical energy) provided by AHAM. Disaggregated values provided by AHAM for the baseline washer are also used for the base case forecast. Calculations based on disaggregated values reflect the efficiencies of machines actually being sold which may differ from the minimum required efficiency. The preliminary base case assumes a 1.5 percent share of H-axis machines in 1995 with a 0.5 percent increase in H-axis sales every year thereafter, until 2030 (i.e., 19 percent).

The NES spreadsheet allows for changes in the distribution of efficiencies of clothes washers due to non-regulatory programs. The user specifies the percent of new clothes washer sales that will achieve the selected energy reduction (relative to the baseline washer design) in future years. In later analyses (i.e., the NOPR) the Department expects to use a distribution of current and forecasted efficiencies based on the best available information. Information is still being gathered for this task. The Department seeks comment on this forecast and welcomes any available information on current product efficiencies.

B. Screening Analysis

The screening analysis reviews various technologies with regard to whether they: (a) are impracticable to manufacture, install and service; (b) have an adverse impact on product utility or product availability; and (c) have adverse impacts on health and safety. The screening analysis establishes product classes, baseline units, and efficiency levels (or combinations of design options) for further analysis.

1. Product Classes

a. General. Product types are divided into classes using the following criteria: (a) the type of energy used; (b) capacity; and (c) performance-related features that affect consumer utility or efficiency. Different energy efficiency standards will apply to different product classes. In general, classes are defined using information obtained in discussions with appliance manufacturers, trade associations, and other interested parties.

b. Product Specific. The Department's three proposals regarding clothes washer product classes and a discussion of related comments follow:

- Eliminate the Semi-Automatic Top-Loading, Front-Loading and Suds Saving classes identified in the May 1991 Final Rule. The Department is proposing to eliminate certain previously defined classifications (Semi-Automatic Top-Loading, Front-Loading and Suds Saving) because they do not offer any added utility which is inherently less energy efficient and therefore would require protection from the energy conservation standards. EPCA, § 325(o)(2)(B)(I)(IV), 42 U.S.C. 6295 (o)(2)(B)(I)(IV). In the May 1991 Final Rule, these classes were not subject to minimum energy conservation standards because they represented a small portion of the market, and due to a lack of adequate information to analyze them. However, the 1988 standard requiring an unheated rinse option is still applicable to these classes. The Department has further reviewed this topic and believes that these products should be subject to the minimum energy conservation standards applicable to either compact or standard clothes washers.
- Divide all products into a Compact (less than 2.0 ft.^{3} capacity) Class and a Standard (2.0 ft.^{3} or greater capacity) Class. In its written comments, Whirlpool asked the Department to maintain the current efficiency requirement for the compact class due to the limited potential for energy-efficient improvements and the small market share for these products. Whirlpool also indicated that the V-axis compact clothes washer market and the manufacturing base for these products has changed since the current standards were developed. The previous stand-alone 1.6 ft.^{3} compact V-axis clothes washer products have been replaced by a product that maintains the small cabinet (22'' width) utility and portability (via castors); however, its basket capacity is slightly larger. Because of the limited market size, Whirlpool is currently the only American manufacturer of these products. They also supply them to other appliance companies for sale under various brand names. For these reasons, the Department will revise the compact V-axis product class definition (1.6 ft.^{3} capacity) to include all V-axis clothes washers less than 2.0 ft.^{3} (Whirlpool, No. 69 at 3). The Department plans to increase the compact class to include all clothes washers (both V- and H-axis machines) less than 2.0 ft.^{3} and seeks comments on this change.
- Classify H- and V-Axis clothes washers as compact or standard rather

than establish a separate class for these products. Based on current information, the Department believes that there is no basis for separate classes for H- and V-axis clothes washers. Recent and near-term product offerings, and working prototypes of horizontal and vertical axis clothes washers demonstrate large energy savings while maintaining important product features. The Department received comments suggesting that it identify V- and H-axis machines as a single product class. Whirlpool stated that the DOE's analyses to date and the recent consumer acceptance in the market of H-axis products confirm the validity of a single product class, irrespective of the axis. Whirlpool further stated that the concerns over clothes washer performance, consumer utility and reliability are unfounded in either principal or fact. (Whirlpool, No. 93 at 1.) The Natural Resources Defense Council (NRDC) stated that the ''H-axis'' design option does not affect the utility of clothes washers and it is not the only design option that can comply with the standards. According to the NRDC, the evidence does not support the establishment of different standards even if separate classes were established. (NRDC, No. 60 at 1.)

However, other commenters feel that the Department should not reject separate product classes. General Electric Appliances (GEA) indicated that the Department is proceeding as if all relevant consumer utilities are met by H-axis products already on the market or by machines planned for production. GEA further stated that the port of access is not the only relevant consumer utility that must be addressed. Many other consumer utilities, including reliability, must be addressed. (GEA, No. 88 at 2.) The Department seeks additional comments on this issue and is currently working with stakeholders to formulate a process to gather additional consumer input on the issues surrounding clothes washer utility. This process is discussed further in Section II.F.2.b.

2. Baseline Units

a. General. In order to analyze design options for energy efficiency improvements, the Department defines a baseline unit. For each product class, the assumed baseline unit is a unit that minimally exceeds the existing standard. To determine the characteristics of the baseline unit in this screening analysis, the Department gathered information from trade organizations, manufacturers, and consultants with expertise in specific product types.

b. Product Specific. The Department issued two new test procedures during the course of this rulemaking: Appendices ''J'' and ''J1.'' 62 FR 45484. (*See* Section I.B.2. on Test Procedure.) The engineering analysis for this supplemental ANOPR is based on the Appendix J1 test procedure. This test procedure calculates a MEF descriptor. Unlike its EF predecessor, the MEF uses remaining moisture content (RMC) to account for energy saved due to lower drying times and temperature use factors (TUFs). Using cloth loads and different water temperatures are among the many other substantive differences between the J and J1 test procedures. Given these different testing methods and variables, there is no computational relationship between the EF and MEF descriptors.

In order to determine the MEF value for the baseline unit, clothes washer manufacturers were asked to take a representative clothes washer with an EF as close as possible to 1.18 (current minimum EF) and perform the new J1 procedure. If no clothes washer was available with an EF value close to 1.18, they were asked to adjust the water volume, machine energy, and/or hot water volume to obtain an EF of 1.18. Five manufacturers (Amana, Frigidaire, GEA, Maytag and Whirlpool) submitted data to AHAM. AHAM mathematically averaged these values to derive an industry average MEF value of 0.817 for the baseline unit (based on an EF=1.18).

3. Design Options/Efficiency Levels

a. General. Following the development of an initial list of design options during the technology assessment and the screening analysis, the Department, in consultation with interested parties, will select appropriate efficiency levels (or combinations of design options) for manufacturing cost and energy use data collection.

b. Product Specific. This clothes washer rulemaking analysis was originally performed using the design option approach. The November 1994 ANOPR included a list of design options that could be considered in determining the potential energy savings from new clothes washers standards. Data on the cost and energy consumption of these design options were obtained from U.S. clothes washer manufacturers through AHAM on May 8, 1995 (AHAM, No. 27). At the July 13, 1995, Workshop, DOE presented a detailed design option analysis that also ranked the cost effectiveness of each option under consideration. On July 6, 1995, AHAM provided additional design option information and comments about the way the information should be interpreted. (AHAM, No. 38.)

A report using the updated design option information was presented during a screening workshop held on November 15, 1996. The report entitled, ''Draft Report on Design Options for Clothes Washers,'' used criteria laid out in the Process Rule to screen out design options and preclude them from further analysis. After the workshop, AHAM commented that the manufacturers did not believe that disclosure of the design options used to achieve a given efficiency level was practical, had value or could be released without disclosure of proprietary information. (AHAM, No. 67 at 1,2.) Since the technical approach to achieve any particular efficiency level above the baseline likely involves multiple design options specific to each company, AHAM stated that its members believed that supplying cost and energy use data for several energy levels was sufficient. Several efficiency levels were selected which corresponded approximately to the efficiency levels calculated using the design-option approach. These efficiency levels were discussed at the March 11, 1998, workshop.

It was agreed that the efficiency level approach would be used. Levels were established and utilized in the engineering analysis (*See* Section II.c.1.b).

4. Proprietary Designs

a. General. In its analysis, the Department considers all design options that are commercially available or present in a working prototype, including proprietary designs. Proprietary designs are fully considered in the Department's engineering and economic analyses.

b. Product Specific. At the November 15, 1996, workshop, it was acknowledged that Whirlpool had four patented proprietary prototype designs that used V- and H-axis platforms. Whirlpool indicated that these were working prototypes. (Whirlpool, No. 55L at 77.) On November 29, 1996, the Department sent a letter to the stakeholders with the patent numbers for the Whirlpool designs as requested during the November workshop. (DOE, No. 57.)

In response to a Department request to obtain more information, AHAM stated that it was inappropriate for its members to comment on the cost/efficiencies of the Whirlpool designs. AHAM asked that prior to seeking cost/efficiency information on these designs, DOE should verify that these clothes washer designs were viable, were able to perform their intended function and had

usage patterns and lifetimes similar to existing clothes washers. (AHAM No. 67 at 2.) At the July 1997 workshop, GEA expressed concern that the Department had not verified that the Whirlpool designs met consumer utility performance requirements. (GEA, No. 72L at 210.)

In response to these concerns, the Department witnessed efficiency testing of the prototype design conducted according to the revised DOE clothes washer test procedure. The results of the testing demonstrated that the prototype could reach efficiency levels comparable to H-axis efficiency levels. The Department also witnessed other performance tests on the Whirlpool design. Tests performed include: (1) cleanliness testing, using several different stains; (2) gentleness of action testing; and (3) and rinsability. The test results were benchmarked by conducting identical tests on two other clothes washers: A top selling V-axis model and a top selling H-axis model. The tests were conducted twice for each machine using a seven pound test load. The American Standards Testing Material ASTM–D4265 standard was used for evaluating stain and soil removal. Nine different types of stained swatches were evaluated, six samples of each stain. The cloth used was specified in the AHAM test methods in addition to various other cloths. The gentleness testing was conducted using a material with a five hole pattern cut into the swatches and was evaluated based on the number of strands present after washing. The rinsability was determined by placing the washed cloths into a high speed exacter and analyzing the residual detergent in the water exacted. In all cases, the performance of the Whirlpool design fell within the range of results obtained for the other clothes washers tested.

The Department will consider the Whirlpool prototype design in this rulemaking in the engineering and economic analyses. However, since the manufacturing costs estimates for the prototype are derived using a different approach than for other efficiency levels cost estimates, the economic analysis will be conducted separately. Further discussion on the costing of the Whirlpool prototype can be found in Section II.C.1.b.i.

C. Engineering Analysis

The engineering analysis first determines the maximum technologically feasible energy efficiency level and then develops cost-efficiency relationships to show the manufacturer costs of achieving increased efficiency.

1. Energy Savings Potential and Manufacturing Costs

a. General. The engineering analysis estimates the energy savings potential of the individual or combinations of design options not eliminated in the previous screening analysis. The Department, in consultation with stakeholders, uses the most appropriate means available to determine energy consumption, including an overall system approach or engineering modeling. Ranges and uncertainties in performance are established. The energy savings measures developed in the engineering analysis are combined with end-user costs in the LCC analysis.

The engineering analysis involves adding individual or combinations of design options to the baseline unit. A cost-efficiency relationship is developed to show the manufacturer cost of achieving increased efficiency. The efficiency levels corresponding to various design option combinations are determined from manufacturer data submittals and from DOE engineering calculations.

The Act requires that, in considering any new or amended standards, the Department must consider those that ''shall be designed to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified.'' EPCA, § 325(l)(2)(A), 42 U.S.C. 6295(l)(2)(A). Therefore an essential role of the engineering analysis consists of identifying the maximum technologically feasible level. The maximum technologically feasible level is one that can be reached by the addition of efficiency improvements and/or design options, both commercially feasible and in prototypes, to the baseline units. The Department believes that the design options comprising the maximum technologically feasible level must have been physically demonstrated in at least a prototype form to be considered technologically feasible.

Three methodologies can be used to generate the manufacturing costs needed for the engineering analysis. These methods include: (1) The design-option approach, reporting the incremental costs of adding design options to a baseline model; (2) the efficiency-level approach, reporting relative costs of achieving energy efficiency improvements; and/or (3) the cost-assessment approach which requires a ''bottoms-up'' manufacturing cost assessment based on a detailed bill of materials. The Department considers public comments in determining the best approach for a rulemaking.

If the efficiency-level approach is used, the Department will select appropriate efficiency levels for data collection on the basis of: (1) Energy savings potential identified from engineering models; (2) observation of existing products on the market; and/or (3) information obtained for the technology assessment. Stakeholders will be consulted on the efficiency level selection.

The use of a design-option approach provides useful information such as the identification of potential technological paths manufacturers could use to achieve increased product energy efficiency. It also allows the use of engineering models to simulate the energy consumption of different design configurations under various user profiles and applications. However, the Department recognizes that the manufacturer cost information derived in the design-option approach does not reflect the variability in design strategies and cost structures that can exist between manufacturers. Therefore, the Department may derive additional manufacturing cost estimates from other approaches developed in consultation with interested parties.

The cost-assessment approach can be used to supplement the efficiency-level or design option approaches under special circumstances when data is not publicly available because of proprietary reasons, the product is a prototype and/or the data is not provided by the manufacturers.

b. Product Specific. At the workshop held on November 15, 1996, a report entitled, ''Draft Report on the Preliminary Engineering Analysis for Clothes Washers,'' was presented. This report analyzed the engineering data submitted by AHAM concerning the manufacturing cost and energy savings potential for different design strategies that combined design options. Stakeholders and peer reviewers at the workshop provided guidance on how the engineering analysis could be improved. Some manufacturers requested that the Department accept new data in replacement of the data originally supplied. (AHAM, No. 6 at 1; Whirlpool, No. 65 at 2.) New cost and performance data was available owing to recent experience in manufacturing efficient designs. It was noted that the existing data did not, as the process rule describes, consider uncertainty and variability in manufacturing costs. (Perlis, No. 55L at 161–5.) Additionally, peer reviewers commented that cost effectiveness is manufacturer specific and suggested that the Department

consider soliciting from manufacturers cost-efficiency curves that leave them free to select optimal design strategies. (Topping, No. 55H at 6.) (Gordon, No. 55I at 5.)

Following the workshop, the Department received a comment from a manufacturer which recommended that further engineering analyses for the rulemaking be focused on energy efficiency (MEF) levels and not on design options. Whirlpool also stated that cost-efficiency curves should be developed for the industry. (Whirlpool, No. 65, at 5). Whirlpool remarked that a cost-efficiency approach, which shows manufacturer costs for increased efficiency, is the most suitable because it provides a high degree of design confidentiality. It recommended that this method be used in the engineering analysis, and that the Department should abandon the practice of adding design options or combinations of options to the baseline clothes washer. (Whirlpool, No. 69 at 3). Whirlpool recommended that the data base for the engineering analysis be updated where large variabilities and/or uncertainties existed. They noted that the market has continued to evolve as many new products had been introduced since the development of the current database. (Whirlpool, No. 92 at 3).

Responding to DOE's request for comments on an approach to gathering data for the engineering analysis, AHAM stated that its members believed that supplying cost and energy use data for several energy levels was sufficient. These levels would include baseline and efficiencies of 5, 10, 15, 20, 35, 40, 45 and 50 percent above baseline. The efficiencies of 5, 10, 15 and 20 percent would apply to a V-axis clothes washer and, the efficiencies of 35, 40, 45, and 50 percent would apply to a H-axis clothes washer. (AHAM, No. 67 at 1). These efficiency levels were selected to correspond approximately to the efficiency levels calculated using the design-option approach. The Department and the manufacturers later agreed to include data for V-axis clothes washers 25 percent above the baseline to adjust for a revision to the baseline MEF from .88 to .817. A complete description of the data collection methodology including a discussion of uncertainty and variability in manufacturing costs, as well as the guidelines used to calculate manufacturing costs is included in the Preliminary TSD.

ACEEE raised concerns relative to the manufacturer cost data provided by AHAM. ACEEE stated that, in general, the average incremental retail costs for high-efficiency washers (35 percent improvement and up) seemed a bit too high based on discussions that it had with a variety of manufacturers and clothes washer technical experts. More specifically, ACEEE expressed concerns that these data show a substantial price jump between the 40 percent and 45 percent improvement cases. ACEEE believes that the 45 percent improvement level can be met with standard H-axis machines with very small incremental costs relative to the 40 percent improvement H-axis machines. It recommends that DOE collect additional data on 40 percent and 45 percent improvement machines, including reverse engineering and revising the previous measure-based engineering analysis. (ACEEE, No. 94 at 1).

The Department notes that the costs reported by AHAM at efficiency levels 40 percent and 45 percent are a representation of industry cost submitals for these levels. Also, given the changes in the test procedure, previous data from the design option engineering analysis cannot be used without causing significant concerns about accuracy and relevance. The results of the cost assessment summarized in Section II.C.1.b.i. will however provide a secondary source of manufacturing costs for several efficiency levels.

At the March 11, 1998, workshop, the Department requested cost and consumption data for V-axis clothes washers at efficiencies of 30, 35, and 40 percent above the baseline. The Department decided to make this request after receiving the results of a third-party independent testing that was conducted on top selling clothes washer models manufactured and sold in the U.S. This testing was held in order to determine if there was a correlation between the EF and the MEF descriptors defined in the test procedure (Appendix J and J1) Final Rule for clothes washers. 62 FR 45484. Since the test procedure was recently finalized, there was no information available on the MEF values for clothes washers currently on the market. This information is needed to determine a distribution of shipments. The preliminary test results indicated that there were at least two currently available V-axis models on the market that could reach efficiency levels near a 30 percent improvement level.

AHAM responded to this request for additional information on April 3 and 8, 1998. AHAM commented that the testing performed for DOE reflects an incorrect assessment of energy efficiency on current models and indicated that manufacturers could not achieve these levels with traditional V-axis clothes washers. (AHAM, No. 84 and 86). Based on follow-up testing conducted for DOE, there appears to be a significant variation in the RMC values obtained in tests even for clothes washers of the same model. DOE plans to further review this issue. Since the two models approaching a 30 percent improvement in efficiency were ''super capacity'' models, the Department will try to determine if capacity or volume effects the maximum achievable efficiency improvement in V-axis designs. The Department seeks comment on this issue.

i. Manufacturing Cost—Reverse Engineering. At the November 1996 workshop, it was acknowledged that Whirlpool had four patented proprietary, working prototype designs which included both vertical and horizontal axis platforms. (Whirlpool, No. 55L at 77). During the workshop, Whirlpool asked that the designs be included in the rulemaking analysis. It also indicated that it would be appropriate to conduct an independent study to estimate the manufacturing costs of the new designs. (Whirlpool, No. 55L at 169). Whirlpool did not see the practicality of each manufacturer estimating the cost of the Whirlpool designs. Estimates by other manufacturers would only be based on patent information. Therefore it could not be expected to produce consistency in approach or a high degree of accuracy. (Whirlpool, No. 69 at 4).

Maytag commented that the Whirlpool designs needed to be subjected to a full and complete engineering and cost analysis by DOE. Maytag requested that all manufacturers be given the opportunity to participate in this process since the cost of applying these designs to a manufacturer's own basic washer design varies greatly from manufacturer to manufacturer. (Maytag, No. 64 at 1). GEA also stated that the analysis needed to be expanded to cover the designs disclosed by Whirlpool. It further stated that only a revised method focusing on the technical know-how, manufacturing capabilities and economic strengths of individual manufacturers would permit the proper evaluation of the impacts on ''atypical manufacturers.'' (GEA, No. 63 at 7).

In response the Department conducted a ''tear-down'' manufacturing cost assessment of one of the V-axis Whirlpool prototypes. The main objective of the manufacturing cost assessment is to quantify the differential manufacturing costs of producing high efficiency clothes washers based on (1) the Whirlpool proprietary V-axis design, and (2) commercially available V- and

H-axis designs. The overall project consists of two phases:

Phase I provides detailed cost estimates for two state-of-art, high volume, V-axis washers as a baseline for further analysis. The major objective of this phase is to obtain stakeholder comment on the costing methodology and baseline costs. Preliminary results of Phase I were presented during the March 1998 workshop. The Phase I methodology and final results are presented in the Preliminary TSD.

Phase II will develop a differential cost estimate for the proprietary V-axis design and for two commercially-available H-axis clothes washers, relative to the baseline clothes washers evaluated in Phase I. This phase is currently in progress. Preliminary results will be made available for public review prior to publishing the NOPR.

Raytheon Appliances (now Alliance Laundry Systems LLC) had questions regarding a number of assumptions in the reverse engineering analysis. These assumptions concerned work shifts per day, equipment depreciation life, capacity utilization and production volume. After considering Raytheon's comments, the Department modified some of the assumptions used in the manufacturing cost assessment approach.

As suggested by Raytheon, the assumption of 2.5 shifts per day was reduced to 2.0 shifts per day. The Department agrees that 2.5 shifts per day is high based on additional visits to several clothes washer manufacturing plants and further discussions with manufacturing staff in the industry. Originally, 2.5 shifts per day was chosen based on an average of 2 shifts per day for assembly operations and 3.0 shifts per day for fabrication processes (pressing, machining, injection molding, etc.). The baseline manufacturing cost analysis has been revised to reflect an average of 2.0 shifts per day for the plant.

The assumption of a 15–17 year lifetime for baseline equipment depreciation life was not changed to 5–7 years as suggested. Based on the Department's industry structure analysis from publicly available sources, the Department believes a 5–7 year life would be considered too short for an average equipment depreciation life. Although some equipment does have a relatively short service life (hand tools ~ 1 year), an average of 15–17 years is more appropriate for the overall plant and equipment. In the analysis, various equipment depreciation lives are used depending on the specific type of equipment. When summarizing the total investment, the overall average is approximately 15 years.

As suggested by Raytheon, the 100 percent capacity utilization assumption was reduced. However it was reduced to 95 percent not 80–90 percent as proposed. Although 100 percent utilization might seem unrealistic, many operations run at or above capacity, depending on current market conditions. Since utilization is dependent on the market, the Department has reduced the utilization to 95 percent to reflect the less than ideal situation. The Department did not lower the utilization to 80 or 90 percent since current market conditions for most manufacturers would indicate higher production. Furthermore, the theoretical ''greenfield'' (entirely new) plant for the baseline unit assumed that construction and sizing were based on current sales and appropriate market forecasts.

The current assumption of a production rate of 1.5 million units per year remains unchanged even though it does not represent a smaller manufacturer such as Raytheon Appliances. The Department is aware that 1.5 million units is not representative of the smaller (or larger) manufacturers, but does represent a median volume. At this time, the Department is keeping the production volume for the ''greenfield'' plant at 1.5 million units per year; however, DOE will be investigating an alternative scenario for a low volume (<500,000 units per year) manufacturer such as Raytheon Appliances. It is important to note that the baseline value will be used to calculate a differential cost for production of a higher efficiency washer at the same production volume.

In summary, the Department has considered all the suggested corrections and made changes to the baseline analysis as deemed appropriate at this time (2.5 shifts reduced to 2.0 shifts, and 100 percent capacity utilization reduced to 95 percent). For a baseline unit, the Department's industry analysis is based on public available data (e.g., Census of Manufacturers by U.S. Department of Commerce) which indicates that equipment depreciation life should remain unchanged. The Department will be investigating the effects of lower production volumes in the NOPR analysis. A sensitivity analysis was used to evaluate each of the assumptions commented on by Raytheon. The impact of these changes on the estimate of baseline cost is approximately 3 to 4 percent.

D. Life-Cycle-Cost (LCC) and Payback Analysis

In determining economic justification, the Act directs the Department to consider a number of different factors, including the economic impact of potential standards on consumers. The Act also establishes a rebuttable presumption that a standard is economically justified if the additional product costs attributed to the standard are less than three times the value of the first year energy cost savings. EPCA, § 325(o)(2)(B)(iii), 42 U.S.C. 6295 (o)(2)(B)(iii).

To consider these requirements the Department calculates changes in LCCs to the consumers that are likely to result from the proposed standard and two different simple payback periods: distributions of payback periods and a payback period (which follows the test procedure without variation), calculated for purposes of the rebuttable presumption clause. The effect of standards on individual consumers includes a change in the operating expense (usually decreased) and a change in the purchase price (usually increased). The net effect is analyzed by calculating the change in LCC as compared to the base case (the current analysis compares the LCC of a new efficiency level to the AHAM baseline). Inputs to the LCC calculation include the installed consumer cost (purchase price plus installation cost), operating expenses (energy, water, sewer, and maintenance costs), lifetime of the appliance, and a discount rate.

The LCC and one of the payback periods (distribution payback) are calculated using the LCC spreadsheet model developed in Microsoft Excel for Windows 95, combined with Crystal Ball (a commercially available software program) based on actual distributions of input variables. The second payback, test procedure payback, is not calculated using Crystal Ball and input variable distributions, but is instead based on the spreadsheet option allowing single input values.

Based on the results of the LCC analysis, DOE selects candidate standard levels for a more detailed analysis. The range of candidate standard levels typically includes: (1) the most energy-efficient combination of design options or most energy-efficient level; (2) the combination of design options or efficiency level with the lowest LCC; and (3) the combination of design options or efficiency levels with a payback period of not more than three years. Additionally, candidate standard levels that incorporate noteworthy technologies or fill in large gaps

between efficiency levels of other candidate standards levels may be selected.

The payback, for purposes of the rebuttable presumption test, attempts to capture the payback to consumers affected if a new standard was promulgated. It compares the cost and energy use of clothes washers consumers would buy in the year the standard becomes effective with what they would buy without a new efficiency standard. In some cases this means comparing the baseline energy efficiency and cost with the trial standard level, in other cases the trial standard level would also be compared to a higher efficiency washer purchased without new standards (but at a lower efficiency than the trial standard level). A weighted average of these payback periods, in the year a new standard level would take effect, is considered the payback for purposes of the rebuttable presumption clause. In future analyses (for the NOPR), all of the consumer economic analysis discussed above will be based on a projected distribution of efficiencies sold at the time a new standard becomes effective (i.e., the base case).

In order to compare the LCCs to the distribution of washer efficiencies, the LCC spreadsheet will be modified to enable the user to input the market share of each washer efficiency level in 5 percent increments.

1. Life-Cycle-Cost Spreadsheet Model

a. General. This section describes the LCC spreadsheet model used for analyzing the economic impacts of possible standards on individual consumers. The LCC analysis is conducted using a spreadsheet model developed in Microsoft Excel for Windows 95, combined with Crystal Ball (a commercially available software program). The Model uses a Monte Carlo simulation to perform the analysis considering uncertainty and variability. The spreadsheet is organized so that ranges (distributions) can be entered for each input variable needed to perform the calculations.

In recognition that each household is unique, variability is explicitly accounted for in the model by performing the LCC calculation for a large number of individual households. A Monte Carlo simulation is used to sample individual households from the Energy Information Administration's (EIA) Residential Energy Consumption Survey (RECS) database. The results are expressed as the number of households having impacts of particular magnitudes.

The statistics provided by the 1993 RECS are based on a sample of 7,111 households from the population of all primary, occupied residential housing units in the United States. Each household is weighted so that the data properly represents the 96.6 million households in the 50 states and the District of Columbia.

The spreadsheet has the capability to sample only subsets of households for the analysis of particular sub-populations, for example, low income households. It also has the capability of isolating households in the RECS database that have a particular fuel combination of appliances (e.g., in the case of water heating and clothes drying the possible combinations of appliances include electric/electric, electric/gas, gas/electric, gas/gas, oil/electric, or oil/gas). Alternately a combination of fuel types, weighted to observed proportions can be specified, representing the entire population. The spreadsheet samples subsets of the U.S. population from the RECS to calculate the effect on sub-group populations. A description of the methodology and contents of the RECS database is contained in the Preliminary TSD.

Major inputs to the LCC analysis are: (1) consumer expense for purchasing an appliance; (2) the period of time the appliance will provide service (lifetime); (3) the value to a residential customer of saving electricity, expressed as cents per kilowatt-hour; (4) the value to a residential customer of saving gas, expressed as dollars per million British Thermal Unit (Btu); (5) the residential price of distillate; (6) energy and/or water consumption; (7) residential customer rate for water and wastewater (sewer)($/thousand gallons), excluding fixed charges; and (8) the rate at which expenditures (cash flows) are discounted to establish their present value. A more detailed discussion of the spreadsheet is contained in the Preliminary TSD.

For LCC analyses the Advisory Committee recommended that DOE use the full range of consumer marginal energy rates instead of national average energy prices. Absent consumer marginal energy rate information, the Committee recommended DOE use a range of net energy rates, calculated by removing all fixed charges. The Department agrees the use of marginal energy rates would improve the accuracy of the analysis (LCC and NES) and will attempt to determine marginal rates. The Department believes it is unknown at this point if removing fixed costs is more or less reflective of marginal rates and does not intend to take this intermediate step.

In order to develop consumer marginal energy rates, the Department proposes to collect data on current rate schedules and energy consumption. These rates will be assigned to a national sample of buildings, weighted to represent the total U.S. population of buildings. The result will be a weighted distribution of consumption by marginal rates. This approach will be applied for residential and commercial customers.

DOE proposes to obtain a sample of residential buildings from existing surveys, such as the RECS or from a commercially available database. The commercially available database is more expensive, but has significant added value in terms of assigning the buildings to states or to utilities, including a broader sample of the population, and permitting stratification of this larger sample to distinguish among some subpopulations. Each building will be assigned to a geographic region (e.g., state or utility service territory). Energy consumption by month will be included in the database for each building, in order to treat seasonal changes in consumption and rates. Peak demand will be included for commercial buildings.

Recent Federal surveys (RECS, Commercial Building Energy Consumption Survey (CBECS)) gather information by fuel on annual energy consumption and total expenditures. Total expenditures included customer and other fixed charges, energy rates, demand charges, taxes, etc. but these are not tabulated separately from each other. These surveys gathered customer bills but did not extract information on rate schedules, fixed charges or marginal rates. The Department proposes to explore the feasibility of extracting historical information on rate schedules, including the relationship between fixed charges and marginal rates to average prices. This effort, if successful, will provide information about the extent to which marginal rates differ from average prices, or from average prices less fixed charges.

Given restructuring of parts of the energy supply sector, customers may have more than one bill (e.g., one from the distribution company, and one or more from generators or suppliers). To capture complete information, future surveys are expected to gather energy pricing information directly from customers, rather than from utilities or local distribution companies. The most efficient means to collect energy pricing information in the future involves changing the current processing of the billing information so as to gather more detail from the bills, to include consumption by month and pricing

information. The pricing information would have for each customer the rate schedule including the marginal rates, fixed charges, demand charges for commercial and industrial customers, or time-of-use rates where applicable. The Department will express the need for these data in discussions with EIA concerning the design of future surveys.

Residential electricity rate schedules will be collected from Federal databases where available, or state regulatory agencies. The information obtained for each rate schedule will include any fixed charges (customer charges, etc.), block structure, and rate per kilowatt-hour (kWh) by block. Information from utilities or local distribution companies will be examined to determine: confirmation of the set of rate schedules, the number of customers by state using each rate schedule, the total electricity sales by state by rate schedule, and (if possible) monthly electricity sales by state by rate schedule.

Residential natural gas rate schedules will be collected from Federal databases where available, or state regulatory agencies. The information obtained for each rate schedule will include any fixed charges (customer charges, etc.), block structure, and rate per therm by block. Information from utilities or local distribution companies will be examined to determine: confirmation of the set of rate schedules, the number of customers by state using each rate schedule, the total gas sales by state by rate schedule, and (if possible) monthly gas sales by state by rate schedule.

Commercial and industrial electricity rate schedules will be examined in a similar process as for residential electricity rates, but with additional information to account for demand charges. The information obtained for each rate schedule will distinguish any fixed charges (customer charges, etc.), block structure, rate per kWh by block, and demand charges.

In the database of buildings, such characteristics as energy consumption and expenditures and number of customers by state or utility will be used to map a rate schedule onto each of the buildings in the national sample. The marginal rate for each building will be the block from the rate schedule corresponding to that building's monthly energy consumption.

For life cycle savings calculations, monthly energy savings will be estimated for each building. These savings will be evaluated for each building at the monthly marginal rate, using the rate schedule assigned to each building.

Until a time series of marginal rates is available, future trends in energy prices will be used to derive estimates of CMER to be used in the economic analysis of possible energy performance standards. The trend in average price (by fuel and sector) will be used to create an index relative to current prices and applied to the current range of marginal rates. In other words, it will be assumed that the marginal rates will change in proportion to the expected change in average price.

Given the uncertainty of projections of future energy prices, scenario analysis will be used to examine the robustness of possible energy efficiency standards under different energy price conditions. These scenarios will be used in the LCC and the NES calculations discussed in Section II.E.1. Each scenario will provide a self-consistent projection, integrating energy supply and demand. The scenarios will differ from each other in the energy prices that result. The Committee suggested the use of three scenarios. While many scenarios can be envisioned, specification of three scenarios should be sufficient to bound the range of energy prices.

The most recent DOE Annual Energy Outlook 1998 (AEO 1998) reference case provides a well-defined middle scenario. In addition, the range of scenarios used in the AEO will be examined to establish the scenarios with the highest and lowest energy prices in the sector and fuel of interest. As an example, for commercial products such as fluorescent lamp ballasts, commercial and industrial electricity prices will be examined. AEO scenarios will serve as the fall back high and low scenarios, and the focus of discussion with stakeholders on further refinements to the high and low bounds. The range of energy prices represented by these scenarios and the underlying assumptions will be made available to stakeholders for comment. Independent estimates of future energy prices will also be considered. Based upon stakeholder input, the underlying assumptions may be further revised. This process will result in defining a likely high and low bound on the energy price trends.

The economic analysis will be conducted using a spreadsheet for LCC, and one for NES. The future trend in energy prices assumed in each of the three scenarios will be clearly labeled and accessible in each spreadsheet. DOE and stakeholders will be able to easily substitute alternative assumptions in the spreadsheets to examine additional scenarios as needed.

Two approaches are proposed to estimate forecast marginal rates:

(1) For now, the trends from the three scenarios will be converted to indexes and applied to the current range of consumer marginal energy rates to estimate future consumer marginal energy rates. So if the trend in average residential electricity prices were to decline by 20 percent over some period of time, then the marginal rate for each household would be assumed to decline from its initial observed value by 20 percent over that same period of time.

(2) Restructuring is expected to simplify rates and to homogenize rates to some extent. That is, rates are expected to move toward the middle of the range. The index approach is subject to question if the change in the range of marginal rates varies depending upon the initial marginal rate. The current range of average residential prices is from about 2 to 14 cents per kWh. If in the future the highest current rates decline, but the lowest current rates fail to decline (or even increase) over time, then the index approach fails. A second approach can account for the differences in trends by using regional data. National Energy Modeling System (NEMS) provides regional information on average prices by sector over time. The rates for buildings, including residential households, in each region will be scaled to correspond to the future trend in average prices for that region.

b. Product Specific. This section discusses the approaches for analyzing the economic impacts on individual consumers from potential new clothes washer standards. A spreadsheet as described in Section II.D.1.a. is used to calculate these economic values. In future analyses, all three of the economic metrics will be compared to a base case of washer efficiencies sold in the year the new standard would take effect. In this preliminary analysis, only the test procedure payback is compared to a distribution of efficiencies forecasted to the year 2003.

i. LCC Analysis. Table 2 summarizes some of the major assumptions used to calculate the consumer economic impacts of various energy-efficiency levels. In addition a number of assumptions are discussed in more detail.

TABLE 2.—ASSUMPTIONS USED IN THE LCC PRELIMINARY ANALYSIS

Start year (effective date of standard)	2003.
Retail Prices: Baseline Clothes Washer	Retail Price—$421 including tax; from retail price survey.
Lifetime	Distribution (12–17 years).
Cycles Per Year	Distribution from RECS database (207–645).
Energy Price Trend	AEO 1998 reference case to the year 2020 with extrapolations to the year 2030.
Water Price	Distribution from Ernst & Young, 1994 National Water and Wastewater Rate Survey ($0.00 to $7.84 per 1000 gallons).
Annual Real change in Water and Sewer Cost (Water Price Escalator)	0 percent.
Discount Rate	Distribution (0–15 percent).
Energy Consumption Per Cycle	AHAM data.
Variation in Household Energy Prices, Energy Use, and Water Heater Shares.	RECS data .

Retail Prices: The analysis accompanying this supplemental ANOPR uses a 2-step mark-up approach to estimate retail prices. First, the manufacturing costs (i.e., full production costs) are marked up to the manufacturer price using a manufacturer mark-up. Then the manufacturer price is marked up by a retail mark-up to arrive at the retail price. The price paid by the consumer includes the sales tax in addition to the retail price. This sales tax is accounted for by using a sales tax mark-up over the retail price of the clothes washers.

In the Preliminary TSD, the Department used a fixed retail mark-up of 1.40, and a fixed mark-up of 1.052 to cover the sales tax. The manufacturer mark-up over full production costs was bound by a maximum value of 1.35, which maintains industry (manufacturer) cost structure, and a minimum value of 1.00, which represents a pass-through of full production costs. The latter includes depreciation of new capital. Recuperation of non-production costs are not included. In order to characterize the uncertainty in manufacturer mark-ups, the Department used a triangular distribution characterized by a maximum manufacturer mark-up of 1.35, a minimum manufacturer mark-up of 1.00, and a most likely mark-up of 1.18 (the average). Using a fixed retail mark-up of 1.40 and a sales tax mark-up of 1.052, the total mark-up from full production costs to consumer price ranges from a minimum of 1.473 to a maximum of 1.990.

The Preliminary TSD presents a detailed discussion on retail mark-ups. The TSD also outlines the Department's methodology for estimating manufacturer mark-ups.

In the future NOPR analyses, the Department will use a consistent set of assumptions for prices across all analysis sections (manufacturer impact, national benefits, and consumer impacts). Manufacturer prices will be marked up by a fixed retail mark-up (currently estimated at 1.40), and a sales tax mark-up (1.052) to arrive at the consumer price. Whereas the development of price scenarios for the manufacturer impact analysis will be the subject of a future workshop, the Department is considering an approach used in the 1991 Arthur D. Little report [1] to AHAM. This approach entails creating manufacturer mark-up scenarios by conducting a financial analysis using the Government Regulatory Impact Model (GRIM). The GRIM is a standard annual cash flow analysis which uses price, quantity, and cost information to assess the impact of regulatory conditions on manufacturer income and cash flow. The model calculates the actual cash flows, by year, and then determines the present value of those cash flows, both without regulations and with regulations. The post-standard retail prices required in order to achieve several scenarios will be found by running the GRIM and treating manufacturer price as a variable. Additional price (mark-up) scenarios that might be considered include: (1) the price (mark-up) resulting in maintenance of current industry value; (2) the price (mark-up) reducing industry value to zero; and (3) the price (mark-up) resulting from pass-through of incremental material, labor, and burden costs only.

The Department received three comments on the subject of manufacturer mark-up. Raytheon commented that the low end of 1.00 for the range of manufacturer mark-up should not be used. It recommended that the economic justification involve not only full production costs but all anticipated costs. (Raytheon, No. 91, at 1). GEA commented that the Department's conclusion on the estimated manufacturer price was erroneous. GEA pointed out that the Department had inexplicably transformed an average manufacturer mark-up of 1.35 into an upper bound. (GEA, No. 88 at 3–4). Whirlpool submitted that an estimation of average manufacturer mark-up of 1.18 is acceptable at this point in the rulemaking. (Whirlpool, No. 93, at 4). In response to these comments, the Department notes that a simple pass through of incremental material costs coupled with declining volumes has been suggested in a previous industry submital as the ''the most likely scenario.'' As described previously, the Department proposes to use the GRIM model to conduct scenario analysis on manufacturer mark-ups to keep the set of assumptions for all analysis sections consistent with one another. The GRIM will use price-volume interactions and manufacturers will be able to comment on the likely price scenario for different efficiency levels. Shipment data will be obtained from the NES spreadsheet model described in Section II.E.1. It may be reasonable to assume that the ability to pass through incremental costs will vary as costs increase and/or product attributes are changed.

The American Council for an Energy-Efficient Economy (ACEEE) commented that, at the March 1998 workshop, the Circuit City representative suggested that assuming an average 40 percent retail markup is probably too high. A 25 percent retail markup was more typical of the industry. The 40 percent estimate may have factored in higher markups on extended warranties and other services. (ACEEE, No. 94 at 3). In reviewing Circuit City's comment, the Department understands that the statement referred to a gross margin of 25 percent which represents a mark-up of 1.33. This is in close agreement with the Department analysis of retailer financial statements having an important component of

[1] Arthur D. Little, Inc., *Financial Impact of DOE Top Loading Horizontal Axis Standards on U.S. Washing Machine Manufacturers, Report to Association of Home Appliance Manufacturers Horizontal Axis Task Force,* August 1991. Page 19. (Speed Queen Company, No. 15, Appendix G)

appliances in their product mix (25.2 percent to 26.3 percent gross margin). Also, as referenced in the Preliminary TSD, this gross margin is the net of some buying and warehousing costs. At present the Department has no basis for changing the retail mark-up assumption. DOE will continue to research data sources and seeks comment on this issue.

Energy Prices: The LCC spreadsheet model samples the individual prices paid by households in RECS(93) (latest published version of RECS). These prices are updated (scaled up or down based on AEO 1998 national prices) and converted to 1997 dollars.

Energy Price Trend: Several possible fuel price scenarios are built into the LCC spreadsheet model, including: (1) constant; (2) AEO 1998 reference case; (3) Gas Research Institute 1998 (GRI 1998); (4) high growth; and (5) low growth. High growth and low growth currently refer to AEO 1998 fuel price scenarios for high and low economic growth. GEA indicated that the Department needs to take additional steps in revising the LCC analysis. Everything in recent experience shows that energy prices continue to decline faster than the forecasters' ability to discern, but the Department continues to build in high price assumptions.

ACEEE indicated that the EIA residential electricity price forecast used in the analysis is too low. It recommends that DOE focus on the EIA ''high economic growth'' case price projections. This case calls for an average residential electricity price decrease of 8.3 percent over the 1996–2010 period. (ACEEE, No. 94, at 3).

In the future, as discussed in the Department's response to the Advisory Committee, the Department will review the range of scenarios used in the AEO to establish the scenarios with the highest and lowest energy prices in the sector and fuel of interest. The most recent DOE AEO 1998 reference case provides a well-defined scenario. Sensitivities both above and below these values can also be modeled in the AEO low and high growth cases. For the above reasons AEO 1998 was used as the forecast used in the preliminary analysis. The range of energy prices represented by these scenarios and the underlying assumptions will be made available to stakeholders for comments. This process will result in defining a likely high and low bound on the energy price trend.

Water and Sewer Prices: Information on water prices is not as readily available as fuel prices information. Some utilities have large fixed charges, while others are subsidized or paid for through taxes. Furthermore, there are no standard approaches to calculating water and sewer costs. In some locations the price of water increases as consumption increases. In other areas, water price decreases with increasing consumption. Additional consideration must be given to consumers who are not connected to a municipality water supply or sewage system. In some cases, only one or the other is connected. As with other variables, the Department plans to use a range of water prices in the economic analysis to account for the variability among different households.

The main source of data on water and sewer prices is from a 1994 survey of water prices in major metropolitan areas by Ernst & Young. The Ernst and Young data was adjusted for service population, base utility charges and average household use by Al Dietemann of Seattle Water. These adjusted values are the basis for the water price used in the preliminary analysis. For the NOPR analysis DOE plans to update the 1994 prices.

Water Price Escalator: The Department has found no national level water price forecasts. Currently, DOE's analysis assumes that future water rates are constant. Whirlpool stated that recent studies (Ernst & Young, 1994 National Water and Wastewater Rate Survey; Raftelis Environmental Consulting Group, 1996 Water and Wastewater Rate Survey) show that water and wastewater charges have increased steadily each year during the period from 1986 to 1996. This trend should be expected to continue and should be reflected in the LCC calculations. (Whirlpool, No. 93 at 2).

ACEEE stated that the present analysis is much too conservative because it assumes that water prices will not increase in real terms. Submitted for the docket was a just-published study by Osann and Young which summarized typical water/sewer bills over the 1986–1996 period. ACEEE recommended that a water/sewer bill inflation rate in the 1.1—2.7 percent range (real) be incorporated into the economic analysis. (ACEEE, No. 94 at 2–3).

The study referred to in the ACEEE comment (Osann and Young) shows an average annual increase of 5.7 % for a residential water/sewer bill over the 1986–1996 time period. Since the underlying inflation rate given was 3.1% this provided an annual increase in water/sewer bills of approximately 2.6% real. In another analysis, using EPA data, in the (Osann and Young) report, infrastructure needs were estimated to be $280 billion. Accounting for the total gallons used and a discount rate, a rate increase of 1.1% (real) was estimated. The ACEEE comment refers to total cost increases and does not specify what portion of the increase can be assigned to an increase in marginal rate. The ACEEE comment recommends a water/wastewater escalation rate of 1.1 to 2.7% real but does not provide a single value or a distribution.

The Department agrees that future water prices should not be assumed to be constant and is therefore in the process of further analyzing both current prices and future escalation rates. The proposed analysis is on going and will be completed after the ANOPR is released. The proposed analysis consists of updating previous data from Ernst and Young report as adjusted by Al Dietemann, as well as the use of new data obtained from the American Water Works Association (AWWA). The Ernst and Young data is being updated by calling 125 utilities, getting their water rate schedules and their forecasts for the future, as well as any historical information available. The Department is working on combining these two data sources into one database. This data will be organized by utility and can be mapped onto either individual RECs households or onto regional areas. A distribution of water prices (as in the current analysis) will be used, as well as a distribution of escalation rates. In an attempt to be consistent with the methodology being developed for fuel rates, the Department will attempt to establish marginal water rates and water prices and escalation rates that vary with the water/wastewater utility. The Department is seeking comments concerning this approach.

Energy consumption per cycle: The energy use information used to calculate LCC is taken from the engineering analysis and adjusted to account for variability in field conditions. This adjustment is for the loads of laundry washed per week, which varies from house to house. It is expressed as a distribution of wash cycles per year that is obtained from the RECS.

Several comments were received on the subject of RECS data. The use of outdated RECS data, especially that related to family size and annual loads, must be discontinued if a truer picture of potential savings is to be drawn. (GEA, No. 88, at 3). Whirlpool noted that a concern was raised at the March, 1998 workshop about the use of 1993 RECS data for the distribution of gas vs. electric water heaters and dryers, family size and number of wash loads per year. Whirlpool agrees that the RECS data could be brought up to date, but this is not a high priority. Whirlpool argues that the use of the currently available

RECS data will not weaken any of the analyses for this rulemaking. (Whirlpool, No. 93 at 1). DOE intends to use updated RECS data when it becomes available.

Manufacturing cost: The LCC spreadsheet is organized so that a range (incorporating variability and uncertainty) can be entered to describe the manufacturing costs associated with increases in energy efficiency. Efficiency improvements over the baseline model can be selected in increments of 5 percent up to a 50 percent efficiency improvement. The cost data used was provided by manufacturers. It was then compiled and reported to the Department by AHAM.

Operating cost: ACEEE stated that the present analysis ignores the possibility that some consumers will use less detergent with new high-efficiency machines than with standard machines. It recommends that DOE construct two alternative scenarios (one in which no detergent will be saved and the other that assumes some consumers will use less detergent). ACEEE indicated that the Bern Kansas study provided some evidence for detergent savings. (ACEEE, No. 94 at 2). Procter and Gamble commented that the perception that detergent dosage will be reduced in horizontal axis or drum washers proportionally to water volume is invalid. While this appears to be a popular belief, the detergent dosage is not substantiated by the facts. Procter and Gamble further stated that the important impact is that users of new lower water use/energy efficient washers cannot expect to find detergent cost savings. (Procter & Gamble, No. 9 at 1). DOE seeks additional data on this issue.

ii. Payback Analysis (Distribution of Paybacks). Payback is calculated based on the same inputs used for the LCC analysis (with the difference that the values are based only on the first year the standard takes effect). The output is a distribution of payback periods. The mean payback period is also reported. Additional information is available in the LCC spreadsheet but is not reported in the Supplemental ANOPR or Preliminary TSD. This data includes charts of cash flow taking into account the changing annual fuel prices.

In order to compare the Payback Periods to the distribution of washer efficiencies, the LCC spreadsheet will be modified to enable the user to input the market share of each washer efficiency level in 5 percent increments.

iii. Rebuttable/Test Procedure Payback. The payback for purposes of the rebuttable presumption clause is calculated on the LCC spreadsheet but without using any distributions or Crystal Ball. Payback periods are first calculated between the new standard level and each washer efficiency being sold in the year 2003. The paybacks are then weighted and averaged according to the percentage of each washer efficiency sold before a new standard is enacted. Rather than distributions, single point values for the inputs are used. These values (including cycles per year, electric fuel source, etc.) will correspond to those outlined in the DOE test procedure, Appendix J1. The result is a single payback value and not a distribution. The payback is calculated for the expected effective year of the standard (e.g., 2003). Examples and further details are presented in the TSD.

With the presently available data, the baseline efficiency level is weighted with market shares of 94.5 percent for vertical axis washers (baseline) and 5.5 percent for horizontal axis washers (35 percent efficiency improvement). If available, data on a forecasted distribution of washer efficiencies in the year 2003 will be used to refine the above calculations for the NOPR analysis.

2. Preliminary Results

a. General. Calculation of LCC captures the tradeoff between the purchase price and operating expenses for appliances. In addition, two other measures of economic impact are calculated: distributions of payback periods and a payback period calculated for purposes of the rebuttable presumption clause. The outputs of the LCC spreadsheet include distributions of the impact for each energy efficiency level compared to the baseline. A variety of graphic displays illustrate the implications of the analysis results. These include: (1) A cumulative probability distribution showing the percentage of U.S. households which would have a net saving by owning a more energy efficient appliance, and (2) a chart depicting the variation in LCC for each efficiency level considered.

b. Product Specific. This section presents preliminary results for LCCs and payback periods for all efficiency levels in the engineering analysis. Since the value of most inputs are uncertain and must be represented by a distribution of values rather than a discrete value, the results presented in the Preliminary TSD are also described by a distribution of values. Tables 3 and 4 provide a brief overview by showing percentile LCCs and payback periods, respectively, for the efficiency level improvements. These tables are generated with the current LCC spreadsheet and have not yet taken into account a distribution of pre-new-standard washer efficiencies, but instead are based on the AHAM baseline value. Greater detail is provided in the Preliminary TSD.

The LCC spreadsheet calculates and reports changes in LCC (delta LCC). The output is a distribution best illustrated by the cumulative charts for LCC difference shown in the Preliminary TSD. The convention is used whereby all values in parentheses are negative. Negative delta LCCs mean that the LCC after standards is lower than that without standards (i.e., the base case).

Table 3 showing the percentiles of LCC change is best described by an example. The 0 percent value means that all delta LCCs are greater than the value shown. The value for the 50th percentile means half of the delta LCCs are higher and half are lower. The 100 percent value means that 100 percent of the calculated values of delta LCC are less than the shown value.

Taking the first row (5 percent efficiency level) as an example, the values are interpreted as follows. The value shown for 0 percent means that there is a 0 percent probability that a household will have a reduction in LCC larger than the $83 in absolute value. Toward the middle, there is a 50 percent probability that a household will have a reduction in LCC larger than $16. The 100 percent column indicates that there is a 100 percent probability that a household will have a reduction in LCC larger than $2.

The column labeled ''mean'' refers to the mean of the distribution. In other words, the average of all of the results of the Monte Carlo runs.

The column labeled ''percent with LCC less than the baseline'' establishes at what percentile there will not be any difference in LCC between the standards case and AHAM baseline (i.e., the delta LCC is 0). For example, for the first row of the table (5 percent energy efficiency increase level), there is a 100 percent probability that households will have a lower LCC if a standard were enacted. For the 50 percent efficiency level, there is a 74.2 percent probability that households will have a lower LCC (In other words, 74.2 percent of households will have a lower LCC if a 50 percent standard level is enacted).

TABLE 3.—PERCENTILE LCC

Percent efficiency level	Change in LCC from baseline [1] shown by percentiles of the distribution of results [2] (values in $)	Percent with LCC less than baseline							
		0	10	25	50	75	90	100	Mean
5	($83)	($33)	($24)	($16)	($11)	($8)	($2)	($19)	100.0
10	($232)	($82)	($55)	($36)	($23)	($15)	$13	($43)	99.5
15	($402)	($140)	($90)	($55)	($33)	($19)	$63	($68)	95.6
20	($504)	($161)	($98)	($55)	($26)	$10	$129	($67)	86.7
25	($1,486)	($465)	($303)	($164)	($67)	$4	$137	($205)	89.2
35	($1,997)	($639)	($408)	($211)	($59)	$79	$570	($252)	83.4
40	($2,039)	($649)	($412)	($207)	($64)	$75	$645	($253)	83.7
45	($2,068)	($606)	($365)	($155)	$9	$159	$666	($199)	73.6
50	($2,075)	($617)	($374)	($156)	$6	$153	$571	($204)	74.2

[1] The baseline LCC, based on SWA of the most likely costs, is $1,554.
[2] For sample size of 10,000 trials. Energy price trends are for AEO 1998. Operating costs include water prices. No escalator is assumed for water price.

TABLE 4.—PAYBACK PERIOD

Percent efficiency level	Payback period in years shown by percentiles of the distribution of results [1]							
	0	10	25	50	75	90	100	Mean
5	0.0	0.0	0.0	0.0	0.0	0.2	3.7	0.1
10	0.0	0.0	0.0	0.1	0.5	1.6	15.8	0.6
15	0.0	0.0	0.1	0.2	0.6	4.1	40.7	1.4
20	0.0	0.1	0.2	0.5	5.2	10.8	57.9	3.6
25	0.0	0.8	1.8	3.6	6.0	8.8	34.5	4.4
35	0.8	2.0	2.8	4.2	6.9	11.4	49.8	5.8
40	0.7	2.0	2.8	4.3	6.9	11.4	57.8	5.8
45	0.7	2.4	3.6	5.8	9.3	13.9	54.0	7.2
50	0.9	2.7	3.8	5.9	9.1	13.5	54.5	7.2

[1] For sample size of 10,000 trials. Energy price trends are for AEO 1998. Operating costs include water prices. No escalator is assumed for water price.

Table 5 below shows the simple payback for purposes of the rebuttable presumption clause. This means it follows test procedure assumptions for electric water heaters and dryers.

TABLE 5.—REBUTTABLE PRESUMPTION PAYBACK IN YEARS [1]

Percent efficiency level	0 percent to standard	35 percent to standard	Weighted payback
5	0.1	NA	0.1
10	0.2	NA	0.2
15	0.6	NA	0.6
20	1.8	NA	1.8
25	2.7	NA	2.7
35	3.7	NA	3.7
40	3.7	3.7	3.7
45	4.9	29.2	6.2
50	5.0	19.6	5.8

[1] Market shares of 94.5 percent V-axis and 5.5 percent H-axis are assumed for the year 2003.

E. Preliminary National Impacts Analysis

The national impacts analysis assesses the net present value (NPV) of total consumer LCC, energy (and water, if appropriate) savings and indirect employment impacts. A preliminary assessment of the aggregate impacts at the national level is conducted for the ANOPR. Analyzing impacts of Federal energy-efficiency standards requires a comparison of projected U.S. residential energy consumption with and without standards. The base case, which is the projected U.S. residential energy consumption without standards, includes the mix of efficiencies being sold at the time the standard becomes effective. Sales projections together with efficiency levels of the washers sold, are important inputs to determine the total energy consumption due to clothes washers under both base case and standards case scenarios. The differences between the base case and standards case provides the energy and cost savings. Depending on the analysis method used, the sales under a standards case projection may differ from those of a base case projection.

The Department estimates national energy and water, if applicable, consumption for each year beginning with the expected effective date of the standards. National annual energy and water savings are calculated as the difference between two projections: a base case and a standards case. Analysis includes estimated energy savings by fuel type for electricity, natural gas, and oil. Energy consumption and savings are estimated based on site energy (kWh of electricity, million Btu of natural gas or oil used in the home), then the electricity consumption and savings are converted to source energy.

DOE agrees with the Advisory Committee's recommendation that the assumption of a constant conversion factor should be dropped in favor of a conversion factor that changes from year

to year. The conversion factor would be calculated for each year of the analysis based on the generating capacity displaced and the amount of site energy saved (see detail procedure below). For future conversion factors, DOE proposes to use the following method:

(1) Start with an integrated projection of electricity supply and demand (e.g., the NEMS Annual Energy Outlook reference case), and extract the source energy consumption.

(2) Estimate projected energy savings due to possible standards for each year (e.g., using the NES spreadsheet).

(3) Feed these energy savings back to NEMS as a new scenario, specifically a deviation from the reference case, to obtain the corresponding source energy consumption.

(4) Obtain the difference in source energy consumption between this standard level scenario and the reference case.

(5) Divide the source energy savings in Btu, adjusted for class specific transmission and distribution losses, by the site energy savings in kilowatt-hours to provide the time series of conversion factors in Btu per kilowatt-hour.

The resulting conversion factors will change over time, and will account for the displacement of generating sources. Furthermore, the NES spreadsheet models will include a clearly defined column of conversion factors, one for each year of the projection. DOE and stakeholders can examine the effects of alternative assumptions by replacing this column of numbers.

Measures of impact reported include the NPV of total consumer LCC, NES and water savings, if appropriate, and indirect employment impacts. Each of the above are determined for selected trial standard levels. These calculations are done by the use of a spreadsheet tool called the NES Spreadsheet Model, which has been developed for all the standard rulemakings and tailored to each specific appliance rulemaking.

1. National Energy Savings (NES) Spreadsheet Model

a. General. In order to make the analysis more accessible and transparent to all stakeholders, a spreadsheet model was developed using Microsoft Excel in Windows 95 to calculate the national energy and water savings, and the national economic costs and savings from new standards. Input quantities can be changed within the spreadsheet. For example, the markup factor to determine retail price from the manufacturing cost can be easily changed in the spreadsheet. Unlike the LCC analysis, in the NES Spreadsheet, distributions are not used for inputs or outputs. Sensitivities can be demonstrated by running different scenarios.

One of the more important components of any estimate of future impact is shipments. Forecasts of shipments for the base case and the standard case need to be obtained as an input to the NES.

The most basic method for forecasting future shipments is a simple saturation-based method which assumes saturations remain unchanged and solves for a growth rate in shipments sufficient to keep saturations constant in light of population growth. There are several factors that can make this estimate inaccurate. These factors include possible changes in: the number of households, saturation levels, appliance lifetimes, prices (including operating costs), and consumer decisions about whether to repair rather than replace an appliance. Because of these complexities, and to improve on the forecasts, the following four different statistical models were studied.

Auto-Regressive Moving Average (ARIMA) Model

Under this model, a univariate time series data analysis approach is used to predict future values of a time series using only its current and past data. The advantage of the ARIMA univariate approach is that only time series data is needed to run the model. The disadvantages of this approach are that (1) historical trends may not be a good guide to the future, and (2) the model cannot explicitly account for changes in the number of households, percent of household owning washers, price, or operating expense.

AHAM has commented that it believes that the use of regression analysis is inappropriate to project shipments of washers to the year 2030. AHAM suggests that a time series (ARIMA) type model is better. AHAM commented that since the method presented at the July 23, 1997, workshop seems to be heavily based on assumptions regarding the saturation of certain housing types, the Department needs to provide these underlying assumptions prior to any calculation of NES. (AHAM, No. 76.) An ARIMA type model is among those being analyzed to obtain shipment forecasts by the Department.

Multi-Variate Time Series Fit

In addition to the ARIMA univariate process for projecting sales, a multi-variate time series data analysis was also reviewed. This analysis is based not only on sales but new housing starts as well. The advantage of the multi-variate time series method is that only two time series are needed to build the model (i.e., shipments from the previous year and the change in the number of households from the previous year). The disadvantages of this approach are that (1) again, historical trends may not be a good guide to the future, and (2) the model cannot explicitly account for replacement sales, changes in saturation, price, and operating cost.

Saturation/Lifetime Model

A saturation/lifetime (S/L) model was developed as yet another alternative for forecasting sales. The S/L model assumes that the saturation of an appliance varies with time. Appliance removals are based upon assumptions regarding the distribution of the appliance lifetimes, and the above functional form of the model allows for flexibility in that different assumptions regarding saturations and lifetimes can be used in an attempt to get the best fit to historical data. The advantages of the saturation/lifetime method are that (1) the method explicitly accounts for lifetimes, (2) housing and saturation stocks are based only on time-series data, so that different housing and saturation fits can be used to get ''good'' fits to historical sales. The disadvantages of this approach are that (1) removals must be based on assumptions about lifetimes, and (2) the model cannot explicitly account for the impact of price and operating cost on housing and saturation stocks.

Accounting Model

The accounting model seeks to forecast shipments by determining sales destined for new homes plus the additional sales meant to replace appliances being retired from service. For those sales meant for the replacement market, the model accounts for the impact of homes which are being retired from the existing housing stock. The advantages of the accounting model are that (1) it is a straightforward and simple model, (2) it explicitly accounts for new appliances separately in new houses and replacements, and (3) price and operating costs can be incorporated into saturation terms. The disadvantages of the accounting model are that (1) saturations of appliances in new and stock homes must be forecasted, (2) housing starts must be forecasted (e.g., based on AEO projections), and removals must be based on assumptions about lifetimes.

Table 6 shows the degree to which each approach accounts for different variables that impact actual shipments.

TABLE 6.—VARIABLES ACCOUNTED FOR BY DIFFERENT FORECAST APPROACHES

Model	Variable accounted for:				
	Washer sales	Number of households	Saturation	Washer life-time	Price and operating cost
ARIMA	X				
Multi-variate	X	X			
Saturation/Life	X	X	X	X	
Accounting	X	X	X	X	X

Among the important drivers of energy consumption are: voluntary programs promoting higher energy efficiency products and consumers response to changes in price and operating expense. The extent to which voluntary programs may increase the share of energy efficient products, prior to the implementation date of any new standards, is estimated in the base case. How consumers respond to changes in prices and operating expenses can be expressed by means of elasticities. An elasticity is the percent change in one quantity in response to a percent change in a driving variable. Elasticity will be taken into account if a method of quantifying the price elasticity can be developed or perhaps several scenarios can be modeled.

Other quantities in the NES spreadsheet are: energy price projections including an analysis of consumer marginal energy rates for each fuel (*See* Section II.D.1.a); effective date of the standard (start year); discount rate and the year of the NPV (1997); manufacturing cost; appliance purchase price; water cost and escalation rate; baseline energy use;, impacts of other appliances applicable to the rulemaking analysis; lifetime; fuel mix; and the conversion factor from site to source energy.

The energy savings and NPV are calculated from the expected date any standard level would take effect to the year 2030. Both individual year and cumulative data are generated. Output charts and tables provide: cumulative energy and water savings, (where applicable), the cost and savings per year (in a chart) and the cost and NPV due to standards.

b. Product Specific. The model to be used for the clothes washer rulemaking is the one described above in Section II.E.1.a. Following is a discussion of the application of this model for the clothes washer rulemaking analysis.

Table 7 shows the assumptions used in NES for the preliminary analysis which are summarized below and discussed in greater detail in the Preliminary TSD.

TABLE 7.—ASSUMPTIONS USED FOR GENERATING PRELIMINARY NATIONAL IMPACTS

Fuel Price	EIA Annual Energy Outlook 1998 to the year 2020 and extrapolated to the year 2030.
Water Price	Average—$3.18 per 1000 gallons.
Discount Rate and the Year of the NPV	7 percent discounted to the year 1997.
Start Year for New Standards	2003.
Annual Real Change in Water & Sewer Cost (water price escalator)	0 percent.
Manufacturing Cost	Shipment-weighted average of the most likely (from AHAM data).
Total Mark up on Manufacturer Costs.	1.731.
Energy Consumption Data	AHAM data.
Clothes Washer Shipments	Assumed same for standards and base case (inelastic to price and energy savings).
Percent Horizontal-Axis Washers	1.5 percent in 1995, increasing by 0.5 percent each year.
Primary Energy Conversion Factors	AEO 1998.

Fuel Price: The energy price scenarios to be considered for the clothes washer analysis include: AEO 1998 reference; GRI 1998; and high and low cases (which are currently AEO high and low economic cases.) Other boundary cases may be analyzed in response to the Advisory Committee on Appliance Energy Efficiency Standards recommendations relating to defining a range of energy price futures for each fuel used in the rulemaking economic analysis. (Advisory Committee, No. 96 at 2) (*See* Section II.D.1.a). See Preliminary TSD for more information on extrapolation of prices between 2020 and 2030. The Department is planning to revise the method contained in the current spreadsheet used for the preliminary ANOPR analysis. AEO 1998 forecasts only go out to the year 2020. Since the analysis needs projections to the year 2030, other methods must be used for this time period. The Department plans to use the EIA approach to forecast fuel prices for the Federal Energy Management Program (FEMP). For petroleum prices, EIA uses the average annual growth rate of the world oil price over the years 2010 to 2020 and then adds the implied refinery and distribution markups for each petroleum product to arrive at the regional prices for the 2021 to 2030 period. Natural gas prices are similarly derived using the average annual growth of wellhead natural gas over 2010 to 2020 and adding on regional markups. Electricity prices are assumed to be constant after 2020 on the assumption that the transition to a restructured industry will have been completed.

Annual Real Change in Water and Sewer Cost (water price escalator): For the preliminary analysis the cost of water and the escalation rate of water prices used in the analysis is specified in Table 7. For the NOPR analysis, DOE plans to update prices and estimate future prices and escalation rates. (*See* Section II.D.b.i.)

AHAM commented that the Department cannot use water savings in its economic justification of standards. Under the provisions of NAECA, this is not a specified consideration and is no more than a side-benefit of the energy savings. (AHAM, No. 76 at 1.) The

Department believes that water savings should be accounted for. EPCA states that in determining whether a standard is economically justified the Secretary shall determine whether the benefits of the standard exceed its burdens by, to the greatest extent practicable considering ''the total project amount of energy or as applicable, water savings likely to result directly from the imposition of the standard,'' ''the need for national energy and water conservation'' and ''other factors the Secretary considers relevant.'' EPCA, § 325(o)(2)(B)(I)(III)(VI)(VII), 42 U.S.C. 6295(o)(2)(B)(I)(III)(VI)(VII).

Clothes Washer Shipments: In the analysis presented in the Preliminary TSD the sales forecast for the base case and the standard case are assumed to be the same. While DOE is reviewing the different models to forecast shipments, shipment forecasts were created using the Residential Energy Model (REM). The purpose for using this data is to provide some data to demonstrate the NES methodology. This data does not reflect how shipments will be determined. These forecasts will be changed for the NOPR analysis.

The accounting model is still under development as price and operating cost effects have yet to be incorporated. Research is on-going to develop new estimates of price and operating expense elasticities to account for: (1) changing the definition of operating expense to include water and wastewater rates; (2) changing the definition of the value of energy savings from average prices to marginal rates; and (3) a longer time series to include more recent data. Inasmuch as the accounting model is the only approach that will take into account price and operating costs, the Department believes it should be the primary tool for forecasting clothes washer shipments. The Department seeks comments about the determination of price and operating cost elasticities.

The base case assumes that clothes washers efficiencies will increase due to non-regulatory reasons. Voluntary programs are expected to increase the share of higher energy efficiency clothes washers sold. The Department has reviewed existing literature relating to voluntary programs (e.g., the Energy Star and WashWise Programs). See the voluntary programs section of the Preliminary TSD for a summary of this review.

Based on this review, in the preliminary analysis the impact of voluntary programs is expressed as the percent of new clothes washers each year that have efficiencies corresponding to those of H-axis washers (35 percent energy reduction from the baseline MEF). The initial share of H-axis machines is estimated to be 1.5 percent of total washer sales in 1995. The impact of voluntary programs is estimated to cause a 0.5 percent increase in H-axis share every year thereafter. The current assumption is that in 2003 the percentage of horizontal axis washers will be 5.5 percent. The energy information used in the spreadsheet is taken from the disaggregated data provided by AHAM for the standard level with the lowest efficiency H-axis model (35 percent increase in energy efficiency). Additional work is underway to estimate future efficiencies under the base case scenario. Current estimates will be revised as additional data becomes available. The Department welcomes any additional data useful for forecasting future sales of high-efficiency washers due to non-regulatory reasons.

Primary Energy Conversion Factors: In the spreadsheet DOE is using the AEO 1998 projections.

Clothes Washer Lifetime: To account for the savings over the lifetime of new clothes washer sales, the analysis continues to the year 2030. Clothes washers are expected to have a lifetime of about 12–16 years. Some washers bought in 2002—prior to the new standards—are expected to be replaced as late as 2018. In those cases, one lifetime for washers meeting the new standards will end in 2030–2034.

2. Preliminary Results

a. General. National energy consumption is calculated for the base case and each candidate standards level by multiplying the number of clothes washers by vintage times unit energy consumption by vintage. The vintage is the age of the washer (one-year old up to sixteen-years old). National annual energy savings are calculated as the difference between two projections: a base case (without new standards) and a standards case. Cumulative energy and water savings, if appropriate, are the sum of the annual national energy or water savings, respectively, over several time periods (e.g., 2003–2010, 2003–2020, and 2003–2030).

Once the energy savings have been determined, economic impacts are calculated. The primary metric for measuring national economic impact is the NPV. NPV (of total life-cycle costs) is the difference between the present value of the energy savings over the life of the appliance and the present value of (usually increased) initial costs of a more efficient appliance. The NPV calculations also captures any differences in installation or maintenance costs. On a national level the efficiencies and number of appliances sold each year are also taken into account. Another way of describing NPV is to determine the LCCs (for all appliances sold) with and without standards and take the difference.

Costs are typically increases in the purchase price associated with the higher energy efficiency of appliances purchased in the standards case compared to the base case. Costs are calculated as the difference in the purchase price between the base case and standards case for new appliances purchased each year multiplied by the appliance sales in the standards case. Price increases appear as negative values in the NPV.

Savings are typically decreases in operating costs associated with the higher energy efficiency of appliances purchased in the standards case compared to the base case. Total operating cost savings is the product of savings per unit and the number of units of each vintage surviving in a particular year. Savings appear as positive values in the NPV.

Net savings each year are calculated as the difference between Total Operating Cost Savings and Total Equipment Costs. The savings are calculated over the life of the appliance, accounting for the differences in yearly energy rates.

Future annual costs and savings are discounted to the present time and summed. The NPV is the difference between the present value of increased costs of a more efficient appliance and the present value of energy savings, relative to the base case expenditures. In other words the NPV resembles the difference in total consumer LCC between the base case and standards case, after correcting for any change in sales of clothes washers. NPV greater than zero indicates net savings (i.e., that the standard reduces consumer expenditures in the standards case relative to the base case). NPV less than zero indicates that the standard incurs net costs.

The elements of the NPV can be expressed in another form, as the benefit/cost ratio. The benefit is the savings in decreased energy expenses, while the cost is the increase in the purchase price due to standards relative to the base case. When the NPV is greater than zero, the benefit/cost ratio is greater than one.

b. Product Specific. The results shown in Table 8 below, are based on a single shipment weighted average (SWA) cost instead of a cost distribution. Below is a description of the columns in the

Preliminary National Energy Savings Results, Table 8.

The first column shows the efficiency improvement over the base case. This is the value of energy efficiency improvement based on the baseline MEF provided by AHAM.

The second column shows the energy savings in quads. This represents the amount of primary energy savings accumulated from the years 2003 to 2030. The energy savings are a result of consumers buying more efficient washers than they would normally have bought had no new standard levels been enacted.

The third column shows the water savings in trillions of gallons at the corresponding efficiency level.

The fourth column, NPV, shows the dollar savings corresponding to the energy and water savings and accounting for increase in the purchase price. The energy prices change from year to year and AEO 1998 projections of future prices are used.

The Preliminary TSD explains the results variables in greater detail and has charts to accompany the tables.

TABLE 8.—PRELIMINARY NATIONAL ENERGY SAVINGS RESULTS (2003 TO 2030 CUMULATIVE)

Percent efficiency improvement over the base case	Energy savings (quads)	Water savings (trillion gallons)	Net present benefit (NPV) (billion 1997$)
5	0.36	0.46	1.02
10	1.18	0.46	2.41
15	2.18	0.45	3.80
20	2.66	0.59	3.67
25	5.09	10.13	11.07
35	7.85	14.62	13.47
40	7.90	14.62	13.53
45	9.49	12.47	8.81
50	10.06	12.47	9.07

3. Indirect Employment Impacts

a. General. The July 1996 Process Rule includes employment impacts among the factors to be considered in selecting a proposed standard. The Department estimates the impacts of standards on employment for appliance manufacturers, relevant service industries, energy suppliers, and the economy in general. Employment impacts are separated into indirect and direct impacts. Direct employment impacts would result if standards lead to a change in the number of employees at manufacturing plants and related supply and service firms. Direct impacts will be further discussed in the section on manufacturing analysis. Indirect impacts are impacts on the national economy other than in the manufacturing sector being regulated. Indirect impacts may result from both expenditures shifting among goods (substitution effect), and income changing, which will lead to a change in overall expenditure levels (income effect).

Indirect employment impacts from standards are defined as net jobs eliminated or created in the general economy as a consequence of increased spending on the purchase price of appliances and reduced household spending on energy. New appliance standards are expected to increase the purchase price of appliances (retail price plus sales tax, and installation). The same standards are also expected to decrease energy consumption, and therefore reduce household expenditures for energy. Over time, the increased purchase price is paid back through energy savings. The savings in energy expenditures may be spent on other items. Using an input/output model of the U.S. economy, this analysis seeks to estimate the effects on different sectors, and the net impact on jobs. National impacts will be estimated for major sectors of the U.S. economy. Public and commercially available data sources and software will be utilized to estimate employment impacts. At least three scenarios will be analyzed to bound the range of uncertainty in future energy prices. All methods and documentation will be made available for review.

b. Product Specific. For purposes of national impact analysis, possible indirect employment impacts for appliance manufacturers, relevant service industries, energy suppliers, and the economy in general (i.e., national employment) due to efficiency standards will be analyzed. The Department is proposing to use a model, which focuses on those sectors of the economy most relevant to buildings, developed by the Office of Building Technologies and State Programs. This software, IMBUILD, is a PC-based economic analysis system that characterizes the interconnections among 35 sectors as national input-output structural matrices. The model can be applied to future time periods. The IMBUILD output includes employment, industry output, and wage income. The impacts of new appliance standards are estimated in the NES spreadsheet as household energy savings (reduced energy expenditures), and increased appliance purchase price. These impacts are output from NES and input to IMBUILD. Additional detail is provided in the Preliminary TSD.

F. Consumer Analyses

The consumer analysis evaluates impacts to any identifiable groups, such as consumers of different income levels, who may be disproportionately affected by any national energy efficiency standard level.

The Department could evaluate variations in regional energy prices, water and sewer prices, variations in energy use and variations in installation costs that might affect the NPV of a standard to consumer sub-populations. To the extent possible, DOE obtains estimates of the variability in each input quantity and considers this variability in its calculation of consumer impacts. The analysis is structured to answer questions such as: How many households are better off with standards and by how much? How many households are not better off and by how much? The variability in each input quantity and likely sources of information are discussed with stakeholders.

Variations in energy use for a particular appliance can depend on factors such as: climate, type of household, people in household, etc. Annual energy use can be estimated by a calculation based on an accepted test procedure or it can be measured directly in the field. The Department could perform sensitivity analyses to consider how differences in energy use will affect sub-groups of consumers.

The impact on consumer sub-groups will be determined using the LCC spreadsheet model. Details of this model are explained in the LCC section of the Preliminary TSD. Of particular interest is the potential effect of standards on households with different income levels.

1. Purchase Price

a. General. The Department will be sensitive to increases in the purchase price to avoid negative impacts to identifiable population groups, such as consumers of different income levels. Additionally, the Department will assess the likely impacts of an increased purchase price on product sales and fuel switching.

b. Product Specific. In order to determine the effect of an increase in the purchase price, it would be useful to know what the elasticity of clothes washer prices is. The Department is still determining how these data could be obtained. While preliminary analyses indicate that factors, such as the current state of the economy have a greater correlation to sales of washers than do an increase in clothes washer prices, it is still important to estimate the impact

of changing prices on the sales of clothes washers. In making estimates of these price effects, the Department needs to gauge the difference in clothes washer sales from a change in the price of all clothes washers, as could result from revised energy efficiency standards. In addition, the Department will be estimating how price changes from revised energy efficiency standards for clothes washers will affect the behavior of consumers.

2. Consumer Participation

a. General. The Department seeks to inform and involve consumers and consumer representatives in the process of developing standards. This includes notification of consumer representatives during the rulemaking process and where appropriate, seeking direct consumer input.

b. Product Specific. The Act requires that ''the Secretary consider, among other factors, if any lessening of the utility or the performance of the products is likely to result from the imposition of the standard. EPCA, § 325 (o)(2)(B)(I)(3), 42 U.S.C. 6295 (o)(2)(B)(I)(3). In this rulemaking because comments have been received specifically to the consumer utility and performance of V- and H-axis clothes washers, the Department reviewed existing literature pertaining to these issues.

The Department has made available a ''Draft Report on Consumer Research for Clothes Washers.'' This document is included in the appendix of the Preliminary TSD. The report summarizes research relative to consumer satisfaction with H-axis washing machines. Sources and projects summarized in the report include:

- Major studies by consortia,
- Individual utility demand side management & market transformation studies,
- Consumer test publications,
- Trade organizations, and
- Government projects.

Based on the December 1997 Advisory Committee meeting, the Consumer Subcommittee made two key recommendations to obtain consumer input:

(1) Adopt a three-step process:

- Obtain background research
- Hold focus groups
- Conduct interviews/surveys.

(2) Initiate the consumer analysis process in the clothes washer rule.

In accordance with the Advisory Committee's recommendations, the Department reviewed background information regarding consumer issues related to clothes washers as discussed in the ''Draft Report on Consumer Research for Clothes Washers.'' At the March 11, 1998, Clothes Washer Workshop, the background research findings were presented and a working group was formed to develop a method for obtaining additional consumer input pertinent to the rule. Two comments were received on the subject of additional consumer research. ACEEE found the body of existing studies to be fairly compelling, and did not see a need for extensive additional work. (ACEEE, No. 94 at 4). Raytheon recommended that consumer purchase studies should involve consumers at all income levels and be made using existing retail prices excluding rebate incentives, for both V-axis and H-axis clothes washers. (Raytheon, No. 91 at 2).

The working group held a conference call on April 30, 1998, to evaluate different techniques for obtaining consumer input. Focus groups, surveys, and a conjoint analysis were all considered. The working group recommended a three-step approach for obtaining additional consumer input:

(1) Develop a list of attributes. Based on the working groups' individual members' research and knowledge. Each member has submitted a list of clothes washer attributes valued by consumers,

(2) Conduct a consumer survey to refine the list of attributes that would be included in a quantitative consumer analysis study,

(3) Conduct a conjoint analysis to quantitatively estimate the value consumers place on the clothes washer attributes.

The Department must first announce the process to use for conducting any type of public survey in the **Federal Register** notice in accordance with the requirements of the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). This will be a separate notice which is in process of being published. The Department will then solicit bids for a marketing research firm to conduct the focus groups to refine the list of attributes and to conduct the conjoint analysis.

G. Manufacturer Impact Analysis

The manufacturer impact analysis estimates the financial impact of standards on manufacturers and calculates impacts on competition, employment, and manufacturing capacity.

Prior to initiating the detailed manufacturing impact analysis the Department will prepare an approach document and have it available for review. While the general framework will serve as a guide, the Department intends to tailor the methodology for each rule on the basis of stakeholder comments. The document will outline procedural steps and outline issues for consideration. Three important elements of the approach consist of the preparation of an industry cash-flow, the development of a process to consider sub-group cash-flow, and the design of an interview guide.

The policies outlined in the process rule required substantial revisions to the analytical framework to be used in performing manufacturer impact analysis for each rulemaking. In the approach document, the Department will describe and obtain comments on the methodology to be used in performing the manufacturer impact analyses. The manufacturer impact analyses will be conducted in three phases. Phase 1 consists of two activities, namely, preparation of an industry characterization and identification of issues. The second phase has as its focus the larger industry. In this phase, the GRIM will be used to perform an industry cash flow analysis. Phase 3 involves repeating the process described in Phase 2 (the industry cash-flow analysis) but on different sub-groups of manufacturers. Phase 3 also entails calculating additional impacts on competition, employment, and manufacturing capacity.

1. Industry Cash Flow

a. General. A change in standards affects the analysis in three distinct ways. Increased levels of standards will require additional investment, will raise production costs, and will affect revenue through higher prices and, possibly, lower quantities sold. To quantify these changes the Department performs an industry cashflow analysis using the GRIM. Usually this analysis will use manufacturing costs, shipments forecasts, and price forecasts developed for the other analyses. Financial information, also required as an input to GRIM, will be developed based on publicly available data and confidentially submitted manufacturer information.

The GRIM analysis uses a number of factors—annual expected revenues; manufacturer costs such as cost of sales, selling and general administration costs, taxes, and capital expenditures related to depreciation, new standards, and maintenance—to arrive at a series of annual cash flows beginning from before implementation of standards and continuing explicitly for several years after implementation. The measure of industry net present values are calculated by discounting the annual cash flows from the period before implementation of standards to some

future point in time. The Preliminary TSD describes the GRIM's operating principles and presents alternative approaches to developing the information necessary to perform the computations.

b. Product Specific. The Department has received manufacturing cost data from manufacturers which was compiled and reported by AHAM. This data will be used to conduct an industry cash flow analysis for the NOPR. A draft document ''Financial Inputs to GRIM for the Clothes Washer Rulemaking Analysis'' has been prepared for stakeholder review. This document outlines and documents the financial assumptions to be used in GRIM when performing the industry cash flow analyses. The Department intends to use the manufacturing costs, retail prices, and shipment values from the preliminary analysis in the GRIM model. This will be distributed to interested parties prior to the workshop to be held after publication of this Supplemental ANOPR.

2. Manufacturer Sub-Group Analysis

a. General. Using industry ''average'' cost values is not adequate for assessing the variation in impacts among sub-groups of manufacturers. Smaller manufacturers, niche players or manufacturers exhibiting a cost structure largely different from industry averages could be more negatively impacted. Ideally, the Department would consider the impact on every firm individually. In highly concentrated industries this may be possible. In industries having numerous participants, the Department will use the results of the industry characterization to group manufacturers exhibiting similar characteristics. The financial analysis of the ''prototypical'' firm performed in the Phase 2 industry analysis can serve as a benchmark against which manufacturer sub-groups can be analyzed.

The manufacturing cost data collected for the engineering analysis will be used to the extent practical in the sub-group impact analysis. To be useful, however, this data should be disaggregated to reflect the variability in costs between relevant sub-groups of firms.

The Department will conduct detailed interviews with as many manufacturers as is possible to gain insight into the potential impacts of standards. During these interviews, the Department will solicit the information necessary to evaluate cashflows and to assess competitive, employment and capacity impacts. Firm-specific cumulative burden will also be considered.

b. Product Specific. In order to conduct a manufacturer sub-group analysis, it will be necessary to define representative sub-groups and conduct separate cash flow analysis for each. For example, one option consists of conducting separate cash flows for all manufacturers. Another option, could entail conducting cash flow analysis only for those manufacturers which believe their impacts are more severe then industry average. The Department will outline and discuss these and other approaches at the post supplemental ANOPR analysis workshop.

Whirlpool proposed that the GRIM model be changed from input to output aggregation. Each industry member would develop its own inputs to the GRIM model over a range of MEF levels proposed by the DOE. The GRIM models would be run by industry members to generate a range of individual company outputs. The outputs of the individual companies could then be aggregated to determine industry impact. Individual companies would not be required to submit detailed input assumptions, but only changes in revenues, shipments, profit after tax, and cash flow, capital investment and design and marketing spending could also be provided. A third party could do the aggregation and then conduct a reality check by comparing the aggregated output to currently available industry data. (Whirlpool No. 66 at 3). The Department seeks further input as to how the data for the GRIM analysis should be collected from the manufacturers and how it should be utilized.

3. Interview Process

a. General. The revised rulemaking process provides for greater public input and for improved analytical approaches, with particular emphasis on earlier and more extensive information gathering from interested parties. The proposed three-phase manufacturer impact analysis process will draw on multiple information sources, including structured interviews with manufacturers and a broad cross-section of interested parties. Interviews may be conducted in any and all phases of the analyses as determined in Phase 1.

The interview process has a key role in the manufacturer impact analyses, since it provides an opportunity for interested parties to privately express their views on important issues. A key characteristic of the interview process is that it is designed to allow confidential information to be considered in the rulemaking decision.

The initial industry characterization will collect information from relevant industry and market publications, industry trade organizations, company financial reports, and product literature. This information will aid in the development of detailed and focused questionnaires, as needed, to perform all phases of the manufacturer impact analyses. It is the intention of the Department that the contents of questionnaires and the list of interview participants be publicly vetted prior to initiating the interview process.

The Phase 3 (sub-group analysis) questionnaire will solicit information on the possible impacts of potential efficiency levels on manufacturing costs, product prices, and sales. Evaluation of the possible impacts on direct employment, capital assets, and industry competitiveness will also draw heavily on the information gathered during the interviews. The questionnaires will solicit both qualitative and quantitative information. Supporting information will be requested whenever applicable.

Interviews will be conducted according to DOE procedures. Interviews will be scheduled well in advance in order to provide every opportunity for key individuals to be available for comment. Although a written response to the questionnaire is acceptable, an interactive interview process is preferred because it helps clarify responses and provides the opportunity for additional issues to be identified.

Interview participants will be requested to identify all confidential information provided in writing or orally. Approximately two weeks following the interview, an interview summary will be provided to give participants the opportunity to confirm the accuracy and protect the confidentiality of all collected information. All the information transmitted will be considered, when appropriate, in DOE's decision-making process. However, confidential information will not be made available in the public record.

DOE will collate the completed interview questionnaires and prepare a summary of the major issues and outcomes. The Department will seek comment on the outcome of the interview process.

b. Product Specific. The Department is developing an interview guide to supplement the sub-group GRIM cash-flow analysis. The interview will solicit information on the possible impacts of potential efficiency levels on manufacturing costs, product prices, and sales. As such it will contribute to the Department's understanding of how sub-groups may have different values for these quantities compared with the

overall industry. This will allow the Department to report and explain significant variances when publishing the analysis results.

Evaluation of the possible impacts on direct employment, capital assets, and industry competitiveness will also draw heavily on the information gathered during the interviews. The questionnaires will solicit both qualitative and quantitative information. Supporting information will be requested whenever applicable.

The Department plans to make a draft of the questionnaire available prior to the post-supplemental ANOPR analysis workshop.

H. Competitive Impact Assessment

a. General. Legislation directs the Department to consider any lessening of competition that is likely to result from standards. It further directs the Attorney General to gauge the impacts, if any, of any lessening of competition. DOE will make a determined effort to gather and report firm-specific financial information and impacts. The competitive analysis will focus on assessing the impacts to smaller, yet significant, manufacturers. The assessment will be based on manufacturing cost data and on information collected from interviews with manufacturers, consistent with Phase 3 of the manufacturer impact analyses. The Department of Justice (DOJ) has offered to help in drafting questions to be used in the manufacturer interviews. These questions will pertain to the assessment of the likelihood of increases in market concentration levels and other market conditions that could lead to anti-competitive pricing behavior. The manufacturer interviews will focus on gathering information that would help in assessing asymmetrical cost increases to some manufacturers, increased proportion of fixed costs potentially increasing business risks, and potential barriers to market entry (proprietary technologies, etc.).

b. Product Specific. The Department met with DOJ on June 11, 1998, for initial discussions pertaining to the manufacturer impacts of potential clothes washers standards. DOJ has agreed to review the manufacturer questionnaire prior to discussions with the manufacturers.

I. Utility Analysis

The utility analysis estimates the effects of proposed standards on electric and gas utilities.

1. Proposed Methodology

a. General. The Department proposes to use a version of EIA's widely recognized NEMS for the utility and environmental analyses. NEMS is a large multi-sectoral partial equilibrium model of the U.S. energy sector that has been developed over several years by the EIA primarily for the purpose of preparing the Annual Energy Outlook (AEO). NEMS produces a widely recognized baseline forecast for the U.S. through 2020 and is available in the public domain. The version of NEMS to be used for appliance standards analysis will be called NEMS–NAECA, and will be based on the AEO 1998 version with minor modifications.[2]

NEMS offers a sophisticated picture of the effect of appliance standards since its scale allows it to measure the interactions between the various energy supply and demand sectors and the economy as a whole. In addition, the scale of NEMS permits analysis of the effects of standards on both the electric and gas utility industries.

To analyze the effect of standards, NEMS–NAECA is first run exactly as it would be to produce an AEO forecast, then a second run is conducted with residential energy usage reduced by the amount of energy (gas, oil, and electricity) saved due to appliance standards for the appliance being analyzed. The energy savings input is obtained from the NES spreadsheet. Outputs available are the same as those in the original NEMS model including residential energy prices, generation and installed capacity (and in the case of electricity, which primary fuel is used for generation).

b. Product Specific. I. Assumptions. Other than the difference in energy consumption due to clothes washer standards, input assumptions into NEMS–NAECA will follow those used to produce AEO 1998. The entire utility analysis will be conducted as a policy deviation from the AEO 1998, and the assumptions will be the basic set of assumptions applied. For example, the operating characteristics (energy conversion efficiency, emissions rates, etc.) of future electricity generating plant will be exactly those used in AEO 1998, and the prospects for natural gas supply will be exactly those assumed in AEO 1998.

Since the AEO 1998 version of NEMS–NAECA forecasts only to the year 2020, a method for extrapolating price data to 2030 is required. The adopted method uses the EIA approach to forecast fuel prices for the Federal Energy Management Programs (FEMP). These are the prices used by FEMP to estimate life-cycle costs of Federal equipment procurements. For petroleum products, the average growth rate for the world oil price over the years 2010 to 2020 is used in combination with the refinery and distribution markups from the year 2020 to determine the regional price forecasts. Similarly, natural gas prices are derived from an average growth rate figure in combination with regional price margins from the year 2020. Electricity prices are held constant at 2020 levels on the assumption that the transition to a restructured utility industry will have been completed.

ii. Results. In principle, any of the forecasts that appear in AEO 1998 could be estimated by NEMS–NAECA to take into account the effects of a particular clothes washer standard level. The Department intends to report the major results on residential sales of fuels, prices of fuels, and generating sources displaced by energy savings. As might be expected, as the total energy use of America is much larger than that possible due to the savings from clothes washers, there is little expected difference in the forecasted price of energy.

J. Environmental Analysis

An Environmental Assessment is required pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), regulations of the Council on Environmental Quality (49 CFR parts 1500–1508), the Department regulations for compliance with NEPA (10 CFR part 1021), and the Secretarial Policy on the National Environmental Policy Act (June 1994). The Environmental Assessment will be presented as part of the NOPR and an opportunity will be provided for comments prior to the final rule.

The main environmental concern addressed is emissions from fossil fuel-fired electricity generation. Power plant emissions include oxides of nitrogen (NO_X) and sulfur (SO_2), as well as carbon dioxide (CO_2). The first two are major causes of acid precipitation, which can affect humans by reducing the productivity of farms, forests and fisheries, decreasing recreational opportunities and degrading susceptible buildings and monuments. NO_X is also a precursor gas to urban smog and is

[2] EIA approves use of the name NEMS only to describe an AEO version of the model without any modification to code or data. Since, in this work, there will be some minor code modifications and the model will be run under various policy scenarios that deviate from AEO assumptions, DOE proposes use of the name NEMS–NAECA for the model as used here.

particularly detrimental to air quality during hot, still weather. CO_2 emissions contribute to raising the global temperature via the ''greenhouse effect.'' The long-term consequences of higher temperatures may include perturbed air and ocean currents, perturbed precipitation patterns, changes in the gaseous equilibrium between the atmosphere and the biosphere, and the melting of some of the ice now covering polar lands and oceans, causing a rise in sea level.

1. Proposed Methodology

a. General. The Department proposes to use the EIA widely recognized NEMS for the appliance environmental analyses (as well as the utility analyses). The version of NEMS to be used for appliance standards analysis will be called NEMS–NAECA, and will be based on the AEO 1998 version with minor modifications. NEMS–NAECA is run exactly the same as the original NEMS except that residential energy usage is reduced by the amount of energy (gas, oil, and electricity) saved due to appliance standards for the appliance being analyzed. The input of energy savings is obtained from the NES spreadsheet. For the environmental analysis, the output is the forecasted physical emissions. The net benefits of a standard will be the difference between emissions estimated by the AEO 1998 version of NEMS–NAECA and those it estimates with a standard in place.

b. Product Specific. The environmental analysis should be relatively straightforward using NEMS–NAECA. Carbon emissions are tracked in NEMS using quite a detailed carbon module that provides good results because of its broad coverage of all sectors and inclusion of interactive effects. The only form of carbon tracked by NEMS–NAECA is CO_2, so the carbon discussed in this report is only in the form of CO_2 but is reported as elemental carbon to remain consistent with the AEO 1998.[3]

The two airborne pollutant emissions that have been reported in past analyses, SO_2 and NO_X, are reported by NEMS–NAECA. In the case of SO_2, the Clean Air Act Amendments of 1990 set an SO_2 emissions cap on all power generation. The attainment of this target is flexible among generators through the use of emissions allowances and tradable permits. NEMS includes a module for SO_2 allowance trading and delivers a forecast of SO_2 allowance prices. Please note that accurate simulation of SO_2 trading tends to imply that physical emissions effects will be zero because emissions will always be at the ceiling. This fact has caused considerable confusion in the past. However, there is an SO_2 benefit from conservation in the form of a lower allowance price and, if big enough to be calculable by NEMS–NAECA, this value will be reported. Please see TSD for further discussion of this issue. One small effect that NEMS–NAECA must consider in addition to AEO 1998 calculations is the effect of standards on SO_2 emissions from in-house combustion of oil, since the emissions cap does not apply to households. This effect is calculated using simple emissions factors.

The NEMS algorithm for estimating NO_X emissions also does not estimate in-house emissions, nor are the emissions calculated for ozone non-attainment areas. In-house emissions account for the combustion of fossil fuels, primarily natural gas, within individual homes. Since households that use natural gas, fuel oil or coal do contribute to NO_X emissions, the effect on in-home NO_X emissions will be calculated externally to NEMS–NAECA, using simple emissions factors.

Energy use for selected appliance efficiency levels will be the same as those in the NES spreadsheet. Other input assumptions into NEMS–NAECA will follow those used to produce AEO 1998. In principle, any of the forecasts that appear in AEO 1998 could be estimated by NEMS–NAECA to take into account the effects of a particular clothes washer standard level, but in the standard reporting, the Department intends to report emissions of SO_2, NO_X and CO_2. The time horizon of NEMS–NAECA is 2020. Beyond this point, results will be extrapolated using a simple formula (for methodology, see preliminary TSD) to extend the forecast to 2030. Alternative price forecasts corresponding to the side cases found in AEO 1998 will also be generated for use by NES and will be explored in a similar fashion with NEMS–NAECA runs.

K. Regulatory Impact Analysis

DOE will be preparing a draft regulatory analysis pursuant to E.O. 12866, ''Regulatory Planning and Review,'' which will be subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) 58 FR 51735 (October 4, 1993). Six major alternatives were identified by DOE as representing feasible policy options to achieve consumer product energy efficiency. Each alternative will be evaluated in terms of ability to achieve significant energy savings at a reasonable cost and will be compared to the effectiveness of the rule.

As part of the docket for the Refrigerator Products Energy Conservation Standards (Docket No. EE–RM93–801) AHAM stated that the Department needs to improve the evaluation of non-regulatory means of achieving energy savings. (AHAM, No. 207 at 7).

Under the Process Rule policies, the Department is committed to continually explore non-regulatory alternatives to standards. In the table below is a discussion of what was examined in 1994 and what is being proposed for this rulemaking. The Department is seeking comments on this approach. This approach is further discussed in the TSD.

Alternatives examined in 1994	Alternatives to examine in 1998
—No action	—No new regulatory action.
—Consumer tax credits.	—Consumer tax credits.
—Manufacturer tax credits.	—Manufacturer tax credits.
—Performance standards.	—Performance standards.
—Consumer rebates	—Rebates.
—Prescriptive standards	
—Voluntary standard	—Voluntary energy efficiency targets.
—Enhanced labeling and consumer education	
	—Early replacement.
	—Mass government purchases.

III. Standards Scenarios

Upon reviewing the preliminary LCC and NES results, the Department observes that the efficiency levels analyzed, 5 to 50 percent efficiency improvement over baseline efficiency, produced a range of impacts. For example, the NES impacts show a range from 0.36–10.06 quads of energy saved over the 2003 to 2030 period. As expected, the higher the efficiency level, the greater the savings. Similarly, the analysis shows an increase in water savings from 0.46 to 12.47 trillions of gallons saved. On the other hand, the NPV shows an increase from $1.02 billion at the 5 percent level, to a maximum of $13.53 billion at the 40 percent level, and then a reduction to $9.07 billion at the 50 percent level. The LCC and payback analyses show results similar to the NPV analysis where the greatest economic benefit is at the 40 percent level.

Based on the analyses performed, the 40 percent efficiency level standard would appear to result in the greatest

[3] The conversion factor from carbon to CO_2 is approximately 3.6667.

economic benefit to the Nation. (*See* Tables 3, 4 and 8.) The national net present benefit at the 40 percent efficiency level (which represents an equivalent to a moderate H-axis level) is $13.53 billion. This is approximately 22 percent higher than the NPV benefit at the 25 percent efficiency level (which represents the current highest V-axis level) and 49 percent higher than the 50 percent level, the maximum technologically feasible level. The LCC results in Table 3 indicate that a 40 percent efficiency level has the greatest consumer mean LCC savings. At 40 percent, the consumer mean LCC savings is $253, or $48 and $49 greater than the 25 and 50 percent levels, respectively. In addition, at the 40 percent level, the range in LCC impacts is a savings of $2,039 (0th percentile) to an increase of $645 (100th percentile). The LCC analysis further shows that at the 40 percent level approximately 83.7 percent of consumers will experience a LCC savings; and that only 16.3 percent of the Nation's population will experience an increase in LCC. Whereas, the LCC analysis indicates that at the 25 percent efficiency level, standards will negatively impact 10.8 percent of the Nation's population and at the 50 percent level, standards will adversely impact 25.8 percent of the population. (*See* Table 3.)

Also, the rebuttable presumption payback periods shown in Table 5 indicate that all efficiency levels from 5 percent up to 25 percent show a less than 3 year payback. The 40 percent efficiency level shows a 3.7 year payback which represents a reasonable payback period considering the increased energy savings at this level. There is a significant jump in the payback period at the 45 and 50 percent efficiency levels therefore making these efficiency levels look less attractive.

These observations are based on preliminary LCC and NES results which will be updated and revised in the NOPR and final rule analyses. These observations, however, do not include analyses results from the manufacturer impact or consumer subgroup and survey information.

The following are examples of possible alternative standards scenarios for consideration by the Department:

- A moderate standard at an early effective date. For example, a level at a 25 percent improvement, effective three years after the publication of the Final Rule.
- A stringent standard, at a later effective date. For example, a level at 45 percent improvement effective five years after the publication of the Final Rule.
- A two phase approach. For example, a level at 20 percent effective three years after the publication of the Final Rule (projected effective date—October, 2002) and a level at 40 percent effective eight years after publication of the Final Rule.

The Department seeks comments on the alternative standard scenarios for consideration in the analysis for the proposed rule.

IV. Public Comment Procedures

A. Participation in Rulemaking

The Department encourages the maximum level of public participation possible in this rulemaking. Individual consumers, representatives of consumer groups, manufacturers, associations, States or other governmental entities, utilities, retailers, distributors, manufacturers, and others are urged to submit written statements on the proposal.

The Department has established a period of 75 days following publication of this document for persons to comment on this proposal. All public comments received will be available for review in the Department's Freedom of Information Reading Room. In addition, the following data is available in the Department's Freedom of Information Reading Room:

- Copies of the Preliminary TSD
- Transcripts of the public hearings
- Copies of the public comments received by the Department
- Previous **Federal Register** notices relating to this clothes washer rulemaking

A public hearing will be held on December 14 (1:00–4:00 p.m.) and 15 (9:00 a.m.–4:00 p.m.), 1998, at the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue SW, Room 1E–245, Washington, D.C. 20585. The December 14 session will be a training session for the Government Regulatory Impact Model (GRIM). More detailed information about this hearing will be on the Office of Codes and Standards web site beginning in November. The web site address is as follows: http://www.eren.doe.gov/buildings/codes_standards/index.htm.

B. Written Comment Procedures

Interested persons are invited to participate in this proceeding by submitting written data, views, or arguments with respect to the subjects set forth in this document. Comments will not be accepted by fax or e-mail. Instructions for submitting written comments are set forth at the beginning of this document and below.

Comments should be labeled both on the envelope and on the documents, ''Clothes Washer Rulemaking (Docket No. EE–RM–94–403),'' and must be received by the date specified at the beginning of this document. Ten copies are requested to be submitted. Additionally, the Department would appreciate an electronic copy of the comments to the extent possible. The Department is currently using WordPerfect™ 6.1. All comments and other relevant information received by the date specified at the beginning of this document will be considered by the Department in the proposed rule.

All written comments received on the supplemental Advance Notice of Proposed Rulemaking will be available for public inspection at the Freedom of Information Reading Room, as provided at the beginning of this document.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information or data that is believed to be confidential, and exempt by law from public disclosure, should submit one complete copy of the document and ten (10) copies, if possible, from which the information believed to be confidential has been deleted. The Department will make its own determination with regard to the confidential status of the information or data and treat it according to its determination.

Factors of interest to the Department, when evaluating requests to treat information as confidential, include: (1) a description of the item; (2) an indication as to whether and why such items of information have been treated by the submitting party as confidential, and whether and why such items are customarily treated as confidential, and whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known or available from other sources; (4) whether the information has previously been available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person that would result from public disclosure; (6) an indication as to when such information might lose its confidential character due to the passage of time; and (7) whether disclosure of the information would be in the public interest.

C. Issues for Public Comment

The Department is interested in receiving comments and data to improve its preliminary analysis. In particular, the Department is interested in seeking response to the following questions and/or concerns that were addressed in this rulemaking.

Information on the energy efficiency and relative market shares of current products on the market as described by the Modified Energy Descriptor (MEF):

• The Department has limited information concerning the energy performance of existing product offerings using the MEF descriptor. Given the vastly different nature of the variables and testing methods of the current J and future J1 test procedures, the EF values cannot be translated to MEF values.

Proposed product classes for products in this rulemaking:

• In their written comments, Whirlpool asked the Department to maintain the current efficiency requirement for the compact class due to the limited potential for energy-efficient improvements and the small market share for these products. Whirlpool also indicated that the V-axis compact clothes washer market and the manufacturing base for these products has changed since the current standards were developed. The previous stand-alone 1.6 ft.^{3} compact V-axis clothes washer products have been replaced by a product that maintains the small cabinet (22″ width) utility and portability (via castors); however, its basket capacity is slightly larger. Because of the limited market size, Whirlpool is currently the only manufacturer of these products. They also supply them to other appliance companies for sale under various brand names. For these reasons, the Department will revise the compact V-axis product class definition (1.6 ft.^{3} capacity) to include all V-axis clothes washers less than 2.0 ft.^{3} (Whirlpool, No. 69 at 3). The Department plans to increase the compact class to include all clothes washers (both V- and H-axis machines) less than 2.0 ft.^{3} and seeks comments on this change.

• The Department received comments suggesting that it identify V- and H-axis machines as a single product class. Whirlpool stated that the DOE's analyses to date and the recent consumer acceptance in the market of H-axis products confirm the validity of a single product class, irrespective of the axis. Whirlpool further stated that the concerns over clothes washer performance, consumer utility and reliability are unfounded in either principle or fact. (Whirlpool, No. 93 at 1.) The Natural Resources Defense Council (NRDC) stated that the ''H-axis'' design option does not affect the utility of clothes washers and it is not the only design option that can comply with the standards. According to the NRDC, the evidence does not support the establishment of different standards even if separate classes were established. (NRDC, No. 60 at 1.)

However, other commenters feel that the Department should not reject separate product classes. General Electric Appliances (GEA) indicated that the Department is proceeding as if all relevant consumer utilities are met by H-axis products already on the market or by machines planned for production. GEA further stated that the port of access is not the only relevant consumer utility that must be addressed. Many other consumer utilities, including reliability, must be addressed. (GEA, No. 88 at 2.) The Department seeks additional comments on this issue and is currently working with stakeholders to formulate a process to gather additional consumer input on the issues surrounding clothes washer utility. This process is discussed further in Section II.F.2.b.

The relationship between clothes washer capacity and the maximum achievable efficiency using conventional V-axis designs:

• AHAM commented that the testing performed for DOE reflects an incorrect assessment of energy efficiency on current models and indicated that manufacturers could not achieve these levels with traditional V-axis clothes washers. (AHAM, No. 84 and 86). Based on follow-up testing conducted for DOE, there appears to be a significant variation in the RMC values obtained in tests even for clothes washers of the same model. DOE plans to further review this issue. Since the two models approaching a 30 percent improvement in efficiency were ''super capacity'' models, the Department will try to determine if capacity or volume effects the maximum achievable efficiency improvement in V-axis designs. The Department seeks comment on this issue.

Data as to whether detergent use is a factor in consumer operating cost and savings:

• ACEEE stated that the present analysis ignores the possibility that some consumers will use less detergent with new high-efficiency machines than with standard machines. They recommend that DOE construct two alternative scenarios (one that no detergent will be saved and the other that some consumers will use less detergent). ACEEE indicated that the Bern Kansas study provided some evidence for detergent savings. (ACEEE, No. 94 at 2). Proctor and Gamble commented that the perception that detergent dosage will reduce in horizontal axis or drum washers essentially proportionally to water volume is invalid. This appears to be a popular belief, but it is not substantiated by the facts. The important impact is that users of new lower water/energy efficient washers cannot expect to find detergent cost savings. (Proctor & Gamble, No. 9 at 1). DOE seeks additional data on this issue.

Data on retail mark-up assumption:

• The American Council for an Energy-Efficient Economy (ACEEE) commented that at the March 1998 workshop the Circuit City representative suggested that assuming an average 40 percent retail markup is probably too high. A 25 percent retail markup was more typical of the industry. The 40 percent estimate may have factored in higher markups on extended warranties and other services. (ACEEE, No. 94 at 3). In reviewing Circuit City's comment, the Department understands that the statement referred to a gross margin of 25 percent which represents a mark-up of 1.33. This is in close agreement with the Department analysis of retailer financial statements having an important component of appliances in their product mix (25.2 percent to 26.3 percent gross margin). Also, as referenced in the Preliminary TSD, this gross margin is the net of some buying and warehousing costs. At present the Department has no basis for changing the retail mark-up assumption. DOE will continue to research data sources and seeks comment on this issue.

Information on national level historical, current, and projections of water and sewer rates:

• Information on water prices is not as readily available as fuel prices information. Some utilities have large fixed charges, while others are subsidized or paid for through taxes. Furthermore, there are no standard approaches to calculating water and sewer costs. In some locations the price of water increases as consumption increases. In other areas, water price decreases with increasing consumption. Additional consideration must be given to consumers who are not connected to a municipality water supply or sewage system. In some cases, only one or the other is connected. As with other variables, the Department plans to use a range of water prices in the economic analysis to account for the variability among different households. DOE seeks information on national level historical, current, and projections of water and sewer rates.

• The Department agrees that future water prices should not be assumed to be constant and is therefore in the process of further analyzing both current prices and future escalation rates. The proposed analysis is on going and will be completed after the ANOPR

is released. The proposed analysis consists of updating previous data from Ernst and Young report as adjusted by Al Dietemann, as well as the use of new data obtained from the American Water Works Association (AWWA). The Ernst and Young data is being updated by calling 125 utilities, getting their water rate schedules and their forecasts for the future, as well as any historical information available. The Department is working on combining these two data sources into one database. This data will be organized by utility and can be mapped onto either individual RECs households or onto regional areas. A distribution of water prices (as in the current analysis) will be used, as well as a distribution of escalation rates. In an attempt to be consistent with the methodology being developed for fuel rates, the Department will attempt to establish marginal water rates and water prices and escalation rates that vary with the water/wastewater utility. The Department is seeking comments concerning this approach.

Information relating to the determination of price and operating cost elasticities:

• In order to determine the effect of an increase in the purchase price, it would be useful to know what the elasticity of clothes washer prices is. The Department is still determining how these data could be obtained. While preliminary analyses indicate that factors, such as the current state of the economy have a greater correlation to sales of washers than do an increase in clothes washer prices, it is still important to estimate the impact of changing prices on the sales of clothes washers. In making estimates of these price effects, the Department needs to gauge the difference in clothes washer sales from a change in the price of all clothes washers, as could result from revised energy efficiency standards. In addition, the Department will be estimating how price changes from revised energy efficiency standards for clothes washers will affect the behavior of consumers.

Information on how the data for the GRIM analysis should be collected from the manufacturers:

• Whirlpool proposed that the GRIM model be changed from input to output aggregation. Each industry member would develop their own inputs to the GRIM model over a range of MEF levels proposed by the DOE. The GRIM models would be run by industry members to generate a range of individual company outputs. The outputs of the individual companies could then be aggregated to determine industry impact. Individual companies would not be required to submit detailed input assumptions, but only changes in revenues, shipments, profit after tax, and cash flow, capital investment and design and marketing spending could also be provided. A third party could do the aggregation and then conduct a reality check by comparing the aggregated output to currently available industry data. (Whirlpool No. 66 at 3). The Department seeks further input as to how the data for the GRIM analysis should be collected from the manufacturers and how it should be utilized.

Comments on the proposed DOE approach for determining shipments:

• In as much as the accounting model is the only approach that will take into account price and operating costs, the Department believes it should be the primary tool for forecasting clothes washer shipments. The Department seeks comments about the determination of price and operating cost elasticities.

• For the purpose of the base case forecast in the preliminary analysis, the impact of voluntary programs has been expressed as the percent of new clothes washers sold each year that will have efficiencies corresponding to those of H-axis washers. The H-axis washer is characterized using the data submitted by AHAM for a 35 percent energy reduction from the baseline MEF. The spreadsheet uses disaggregated values (i.e., water heater energy, dryer energy and mechanical energy) provided by AHAM. Disaggregated values provided by AHAM for the baseline washer are also used for the base case forecast. Calculations based on disaggregated values reflect the efficiencies of machines actually being sold which may differ from the minimum required efficiency. The preliminary base case assumes a 1.5 percent share of H-axis machines in 1995 with a 0.5 percent increase in H-axis sales every year thereafter, until 2030 (i.e., 19 percent).

The NES spreadsheet allows for changes in the distribution of efficiencies of clothes washers due to non-regulatory programs. The user specifies the percent of new clothes washer sales that will achieve the selected energy reduction (relative to the baseline washer design) in future years. In later analyses (i.e., the NOPR) the Department expects to use a distribution of current and forecasted efficiencies based on the best available information. Information is still being gathered for this task. The Department seeks comment on this forecast and welcomes any available information on current product efficiencies.

Data on the possible adverse affects of standards on identifiable groups of consumers that experience below-average utility or usage rates:

• The consumer analysis evaluates impacts to any identifiable groups, such as consumers of different income levels, who may be disproportionately affected by any national energy efficiency standard level.

Information on what non-regulatory alternatives to standards need to be reviewed:

• Under the Process Rule policies, the Department is committed to continually explore non-regulatory alternatives to standards. In the table below is a discussion of what was examined in 1994 and what is being proposed for this rulemaking. The Department is seeking comments on this approach. This approach is further discussed in the TSD.

Alternatives examined in 1994	Alternatives to examined
—No action	—No new regulatory action.
—Consumer tax credits.	—Consumer tax credits.
—Manufacturer tax credits.	—Manufacturer tax credits.
—Performance standards.	—Performance standards.
—Consumer rebates	—Rebates.
—Prescriptive standards.	
—Voluntary standards	—Voluntary energy efficiency targets.
—Enhanced labeling and consumer education.	
	—Early replacement.
	—Mass government purchases.

Comments on the alternative standard scenarios:

• The following are examples of possible alternative standards scenarios for consideration by the Department:

• A moderate standard at an early effective date. For example, a level at a 25 percent improvement, effective three years after the publication of the Final Rule.

• A stringent standard, at a later effective date. For example, a level at 45 percent improvement effective five years after the publication of the Final Rule.

• A two phase approach. For example, a level at 20 percent effective three years after the publication of the Final Rule (projected effective date—October, 2002) and a level at 40 percent effective eight years after publication of the Final Rule.

V. Review Under Executive Order 12866

DOE provided to the Office of Information and Regulatory Affairs

(OIRA) in the Office of Management and Budget a copy of this document for comment. At the proposal stage for this rulemaking, DOE and OIRA will determine whether this rulemaking is a significant regulatory action under Executive Order 12866, Regulatory Planning and Review. 58 FR 51735 (October 4, 1993). Were DOE to propose amendments to the energy conservation standards for clothes washer, the rulemaking could constitute an economically significant regulatory action and DOE would prepare and submit to OIRA for review the assessment of costs and benefits required by Section 6(a)(3) of Executive Order 12866. Other procedural and analysis requirements in other Executive Orders and statutes also may apply to such future rulemaking action, including the requirements of the Regulatory Flexibility Act, 5 U.S. C. 601 *et seq.*; the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*; and the Unfunded Mandates Act of 1995, Pub. L. 104–4; and the National Environmental Policy Act of 1969, 42 U.S. C. 4321 *et seq.*

The draft of today's action and any other documents submitted to OIRA for review have been made a part of the rulemaking record and are available for public review in the Department's Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E–190, Washington, DC 20585 between the hours of 9:00 and 4:00, Monday through Friday, telephone (202) 586–6020.

Issued in Washington, DC, on October 23, 1998.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 98–30555 Filed 11–18–98; 8:45 am]

BILLING CODE 6450–01–P

federal register

Thursday
November 19, 1998

Part IV

Environmental Protection Agency

40 CFR Part 261

Hazardous Waste Management System: Identification and Listing of Hazardous Waste, Solvents; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SWH–FRL–6185–3]

RIN 2050–AD84

Hazardous Waste Management System: Identification and Listing of Hazardous Waste Solvents

AGENCY: Environmental Protection Agency.

ACTION: Final decision.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is issuing a final decision not to list wastes generated from the use of 14 chemicals as solvents as hazardous under the Resource Conservation and Recovery Act (RCRA). The determinations in this rule are limited to specific solvent wastes. This rule is a determination only that the solvent wastes considered will not be added to the list of hazardous wastes and is not a determination that the underlying chemicals are nontoxic in all circumstances in which they are used or discarded.

DATES: Today's final decision will become effective on December 21, 1998.

ADDRESSES: Supporting materials are available for public viewing and photocopying in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The Docket Identification Number is F–98–SLDF–FFFFF. The RIC is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The index and some supporting materials are available electronically. See the **FOR FURTHER INFORMATION CONTACT** section for information on accessing them.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline, toll-free, at (800) 424–9346 or at (703) 920–9810. The TDD Hotline number is (800) 553–7672 (toll-free) or (703) 486–3323 in the Washington, DC metropolitan area.

For technical information on the RCRA hazardous waste listings, contact Ron Josephson or Robert Kayser, Office of Solid Waste (5304W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The telephone number is (703) 308–8890.

SUPPLEMENTARY INFORMATION: There are no regulated entities as a result of this action.

The index and the supporting materials are available on the Internet: Follow these instructions to access the information electronically:

WWW: http://www.epa.gov/epaoswer/hazwaste.htm#id
FTP: *ftp.epa.gov*
Login: anonymous
Password: your Internet address
Files are located in /pub/oswer

The contents of the preamble to this final rule are listed in the following outline:

I. Legal Authority and Background
A. Statutory and Regulatory Authorities
B. Existing Solvent Listings and the Regulatory Definition of Solvent
II. Summary of Proposed Rule
A. Determinations Not to List Solvent Wastes as Hazardous Waste
B. Summary of Risk Assessment Supporting the Proposed Rule
III. Peer Review of Calculated Toxicological Benchmarks
IV. Summary of Response to Comments and Rationale for Final Rule
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B. Methodology
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2. Lack of Sampling and Analysis
3. Consistency of Methodology With Other Listing Determinations
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4. Comparison with HWIR Exit Levels
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A. Regulatory Impact Analysis Pursuant to Executive Order 12866
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D. Executive Order 12875: Enhancing Intergovernmental Partnership
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G. Paperwork Reduction Act
H. National Technology Transfer and Advancement Act
I. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments
J. Congressional Review Act

I. Legal Authority and Background

A. Statutory and Regulatory Authorities

The Environmental Protection Agency (EPA) conducted this investigation and listing determination under the authority of sections 2002(a), 3001(a), (b) and (e)(2) of the Solid Waste Disposal Act (42 U.S.C. 6912(a), and 6921(b) and (e)(2)), as amended by various other laws, the most comprehensive of which was the Hazardous and Solid Waste Amendments (HSWA) of 1984. These statutes are commonly referred to as the Resource Conservation and Recovery Act (RCRA) and are codified at Volume 42 of the United States Code (U.S.C.), sections 6901 to 6992(k).

Section 3001(a) of RCRA, 42 U.S.C. 6921(a), requires EPA to promulgate criteria for identifying characteristics of hazardous wastes and for listing hazardous wastes. Section 3001(b) of RCRA requires EPA to promulgate regulations, based on these criteria, identifying and listing hazardous wastes which shall be subject to the requirements of the Act. Section 1004(5) of RCRA, 42 U.S.C. 6903(5), defines the term ''hazardous waste.'' There are two types of hazardous waste. First, hazardous wastes are those solid wastes which may cause or significantly contribute to an increase in mortality, serious irreversible illness, or incapacitating reversible illness. Second, hazardous wastes are those solid wastes which may pose a substantial present or potential hazard to human health or the environment when improperly managed. Id.

EPA's regulations establishing criteria for listing hazardous wastes are codified at Title 40 of the Code of Federal Regulations (CFR) 261.11 (40 CFR 261.11). Section 261.11 presents three criteria by which EPA identifies wastes as hazardous.

First, solid wastes may be classified as ''characteristic'' wastes if they exhibit any of the characteristics of hazardous waste identified at 40 CFR 261.21–24 (i.e., ignitability, corrosivity, reactivity, or toxicity).

Second, solid wastes may be listed as acutely hazardous if they are fatal to humans at low doses, lethal in animal studies at particular doses designated in the regulation, or otherwise capable of causing or significantly contributing to an increase in serious illness.

Third, solid wastes may be listed as hazardous if they contain any of the toxic constituents identified in Appendix VIII of 40 CFR part 261 and the Agency concludes, after considering the eleven factors enumerated in 40 CFR 261.11(a)(3), that the waste is capable of

posing a substantial present or potential hazard to human health or the environment when improperly managed. A substance is listed in Appendix VIII if it has been shown in scientific studies to have toxic, carcinogenic, mutagenic, or teratogenic effects on humans or other life forms. Today's listing determination has been made pursuant to this third set of criteria.

As part of its regulations implementing section 3001(b) of RCRA, EPA published a list of hazardous wastes that includes hazardous wastes generated from nonspecific sources (F-wastes) and a list of hazardous wastes from specific sources (K-wastes). These lists, published at 40 CFR 261.31 and 261.32, respectively, have been amended several times.

Persons who generate, transport, treat, store, or dispose of wastes listed as hazardous must do so subject to Federal requirements under RCRA. Facilities that must meet the hazardous waste management requirements, including the need to obtain permits to manage hazardous wastes, are commonly referred to as RCRA Subtitle C facilities. EPA standards and procedural regulations implementing Subtitle C are found generally at 40 CFR parts 260 through 279.

Solid wastes that are not hazardous wastes may be disposed of at facilities that are overseen by State and local governments. These facilities are referred to as RCRA Subtitle D facilities. EPA regulations affecting Subtitle D facilities are found generally at 40 CFR parts 240 through 247, and parts 255 through 258.

Section 3001(e)(2) of RCRA requires EPA to determine whether to list as hazardous several specified wastes, including solvent wastes. The Environmental Defense Fund (EDF) and EPA entered into a consent decree to resolve issues raised in a civil action brought by EDF (*EDF* v. *Browner,* Civ. No. 89–0598 (D.D.C.)) in which the Agency agreed, among other things, to a schedule for making a listing determination on spent solvents. This listing determination is to consider spent solvents, still bottoms from the recovery of these solvents, and spent solvent mixtures when the following chemicals are used as solvents: cumene, phenol, isophorone, acetonitrile, furfural, epichlorohydrin, methyl chloride, ethylene dibromide, benzyl chloride, p-dichlorobenzene, 2-methoxyethanol, 2-methoxyethanol acetate, 2-ethoxyethanol acetate, and cyclohexanol.

For an additional set of seven solvents, EPA agreed to conduct a study and issue a final report by August 30, 1996. This study, which EPA completed on August 22, 1996, discusses the wastes associated with the use of the materials as solvents, the toxicity of the wastes, and a description of the management practices for the wastes.

Solvent uses are found throughout various industries and, thus, would fall under the category of wastes from nonspecific sources (F-wastes) if listed in 40 CFR 261.31. In fact, wastes designated F001 through F005 are various wastes from solvent uses of a number of chemicals. In today's action, EPA has decided not to amend 40 CFR 261.31 to add wastes generated during the use of the 14 chemicals of concern as solvents.

EPA emphasizes that the determination not to list these wastes only means that the Agency has found it is not appropriate to list as hazardous the wastes across broad industry categories that could result from solvent uses of the 14 chemicals. As will be more fully explained below, EPA did not find that solvent uses for these chemicals, in general, produce hazardous wastes that require listing. Many of the wastes examined are hazardous already because they are characteristic wastes under 40 CFR part 261, subpart C, or contain other solvent wastes currently listed as hazardous. In addition, some of the chemicals may produce wastes that are hazardous when used in ways other than as solvents, perhaps as catalysts, feedstocks or other uses in chemical manufacturing processes. Solvents use simply does not constitute an appropriate way to designate these chemicals as a hazardous waste category under RCRA for wastes from nonspecific sources. Particular industrial wastes from these chemicals might be hazardous, but such wastes were not examined in this determination.

B. Existing Solvent Listings and the Regulatory Definition of Solvent

Five hazardous waste listings for specific solvents have been promulgated to date: F001, F002, F003, F004, and F005. These are found at 40 CFR 261.31. Today's decision applies the same criteria for defining solvent wastes as are applied to these existing solvents listings. These criteria are explained in the **Federal Register** of December 31, 1985 (50 FR 53316) and are also consistent with the requirements of the EDF Consent Decree.

The December 1985 document amended the solvent listings to include spent solvent mixtures when the solvent, before it is used, contains 10 percent or more of total listed solvents. The original listing included only the technical grade, practical grade or pure form of the solvents when used. This threshold level was considered by the Agency to be well below the minimum solvent concentration typically used in solvent formulations and was designed to bring the majority of listed solvent mixtures used in commerce into the hazardous waste management system, while excluding dilute mixtures or *de minimis* concentrations.

In addition, the document issued several clarifications to the original listings. First, the listings apply to ''spent'' solvents—those that are no longer fit for use without being regenerated, reclaimed, or otherwise processed. (See 40 CFR 261.1(c) (1) and (4); 261.2(c) (3) and (e)). Second, the listings cover only those solvents used for their solvent properties—''to solubilize (dissolve) or mobilize other constituents.'' These include solvents used in degreasing, cleaning, fabric scouring, as diluents, extractants, reaction and synthesis media. The document stated that the listings do not cover wastes from the processing of products where a chemical that might be used as a solvent is, instead, used as a reactant or where a chemical is used as a solvent only as an ingredient in the formulation of a commercial chemical. This latter category would include chemicals used as a solvent in paint formulations to dissolve the paint itself. These uses do not generate ''spent solvent'' wastes. The wastes of concern for these products would be the production process wastes or wastes from the use of the product, not the solvent itself.

This approach is also consistent with the requirements of the EDF Consent Decree. This is because the consent decree identifies a subset of solvent wastes that are potential candidates for listing and specifies that the listing determination applies to ''spent solvents,'' a term that tracks the language of the existing listings. Moreover, this approach had been the longstanding approach of the Agency to dealing with solvent listings at the time the Consent Decree was negotiated and should be interpreted as representing the understanding of the parties.

This approach, whereby EPA has limited the scope of this rulemaking through this focused definition of solvents subject to the listing, is a reasonable interpretation of RCRA and is consistent with EPA's historical treatment of solvent listing descriptions. Use of the definition has allowed the Agency to place reasonable limits on the scope of its listing investigation for this rulemaking. RCRA 3001(e)(2) directs

EPA to make a listing determination on ''solvents,'' but provides no further direction on the meaning of that term. EPA, therefore, has the discretion to reasonably define the scope of the listing determination. Given the ubiquity of solvents, the great variety of uses and the huge differences in the composition of the waste streams, EPA could not gather the evidence to list ''solvent wastes'' as a general category. Under the Agency's regulations at 40 CFR 261.11(b), wastes may be listed as a category if they are ''typically or frequently'' hazardous. EPA could make no such findings for ''solvent'' wastes in general and, therefore, has reasonably focused its investigation and listing decision.

As noted above, the existing solvent listings are limited to spent solvent mixtures when the solvent, before it is used, contains 10 percent or more of total listed solvents. While wastes from this use threshold were the primary focus of today's listing determination, EPA also considered in its evaluations the few solvent uses that were reported to be below the 10 percent threshold.

In a previous proposed hazardous waste listing for wastes from the production of dyes and pigments (59 FR 66072, December 22, 1994) EPA presented the general approach the Agency uses for determining whether to list a waste as hazardous pursuant to 40 CFR 261.11(a)(3). The discussion focused on the selection of waste management scenarios used in assessing risk and the use of information on risk levels in making listing determinations. This approach was further developed in EPA's listing for petroleum refining process wastes (proposed rule published at 60 FR 57747, November 20, 1995; final rule published at 63 FR 42110, August 6, 1988). EPA is employing the same general approach in this final rulemaking. Readers are referred to these documents for a description of EPA's listing policy. Also, section II.C.2. of the proposed rule, ''Risk Assessment,'' contains a discussion of how elements of EPA's listing policy were applied in today's listing determination.

The following section contains a summary of the methodology used to arrive at the no-list determinations in today's document. For more details on this methodology, see the proposed rule, background document, and the response to comments document in the docket.

II. Summary of Proposed Rule

A. Determinations Not To List Solvent Wastes as Hazardous Waste

EPA proposed the decision not to list the spent solvent wastes from the 14 chemicals noted above on August 14, 1996 (61 FR 42318). The Agency determined that these wastes did not meet the criteria for listing set out in 40 CFR 261.11. The proposed rule presented the waste characterization, waste management, mobility, persistence, and risk assessment data that were the bases for the Agency's proposed decision not to list these wastes as hazardous. Further details of EPA's approach are presented in the Hazardous Waste Listing Determination Background Document for Solvents (hereafter known as ''Listing Background Document'') in the docket for the proposal to today's rule.

As explained in section II.B of the proposed rule, spent solvents differ from other listed wastes among EPA's waste listings in that the solvents are used in manufacturing and allied processes rather than being the principal waste streams generated by manufacturing processes. In order to characterize industrial solvent use, the Agency sent out almost 1,500 preliminary questionnaires to cover the 21 total chemicals (14 from the listing determination and seven from the study). An additional 60 facilities were surveyed on their use of these chemicals as solvents through the chlorinated aliphatics industry survey. EPA then sent out a full RCRA section 3007 survey to facilities using greater than a combined total of 1,200 kilograms of all the chemicals of concern.

The Agency consulted various literature and reference sources, such as Chemical Abstracts, general reference books, the Agency's Toxic Release Inventory (TRI) compiled under section 313 of the Emergency Planning and the Right-to-Know Act (EPCRA), databases compiled for various EPA programs dealing with air and water pollution, and information available from trade associations. Of the 14 chemicals involved in the listing determination, 11 were on the TRI. Use of the literature, Chemical Abstracts, TRI, and other EPA databases allowed the Agency to focus on the industries that actually use these chemicals as solvents. In addition, many of these sources gave strong indications as to when major uses of a chemical were not as a solvent.

Once the Agency narrowed down the potential solvent-using industries, the Agency developed a list of facilities to survey about their solvent use. These facility names and addresses were obtained again from a variety of sources, including TRI, trade associations, and other Agency media program sources. The Agency sent a short (''preliminary'') questionnaire to approximately 1,500 facilities inquiring about uses of any of the 14 listing determination chemicals as solvents and the quantities used.

The Agency used the preliminary questionnaire data to develop the large questionnaire mailing list and to organize site visits. The Agency also made several hundred confirmatory telephone calls to determine that reported information was correct. The data from the preliminary questionnaire showed the Agency several distinct patterns of solvent use: facilities that use large amounts of any of these chemicals as solvent, those that use small quantities as solvents, and those that use none of the chemicals as solvents. The Agency found that a solvent use quantity of 100 kg per month, or 1,200 kg per year, provided a mathematically convenient separation of those facilities who use large amounts of solvent and those who use very little and provided an indication as to which facilities were likely to be large quantity generators of hazardous waste based on use of these chemicals as solvents. Based on careful analysis of the data, the Agency identified likely large-scale users of these chemicals as solvents.

The Agency then developed the large questionnaire. This questionnaire reconfirmed data on solvent use and requested detailed information on a facility's solvent-using processes, waste generation, waste management, and waste minimization activities. The Agency sent this questionnaire to approximately 150 facilities that indicated to the Agency through the preliminary questionnaire that significant solvent uses of these chemicals exist. The data obtained from the questionnaire were applied to the risk assessment process described in today's document as well as the preparation of the background document.

To summarize the results, 4 of the 14 chemicals showed no use as a solvent. The remaining 10 chemicals were analyzed in the Agency's risk assessment based on solvent uses found by the Agency. For the 10 chemicals of the required listing determination for which there were solvent uses (acetonitrile, 2-ethoxyethanol acetate, 2-methoxyethanol, 2-methoxyethanol acetate, cyclohexanol, cumene, phenol, furfural, isophorone, and methyl chloride), EPA found that the management of residuals from the use of these chemicals as solvents did not pose a risk to human health or the

environment under the plausible management scenarios assessed. The data used as the bases for these determinations were presented in sections II.D through II.M of the proposed rule (61 FR 42327). Detailed information is also presented in the background documents supporting the proposed rule (RCRA Docket number F–96–SLDP–FFFFF).

Specifically, none of the solvents satisfy the criteria for listing in 40 CFR 261.11 (a)(3). For acetonitrile, 2-methoxyethanol, and methyl chloride, while risk analyses indicated some potential risk from air releases of these chemicals from onsite accumulation in open tanks, EPA believes this risk would not be significant because most, or in some cases all, of the nonwastewater residuals are already regulated as hazardous waste. For phenol, 2-ethoxyethanol acetate, furfural, cumene, cyclohexanol, isophorone, and 2-methoxyethanol acetate, the risk estimates indicated that spent solvent residuals from the use of these chemicals as solvents do not pose a substantial risk or potential hazard to human health or the environment through the plausible management scenarios and pathways assessed.

For the remaining four chemicals subject to the required listing determination in the EDF Consent Decree (1,4-dichlorobenzene, benzyl chloride, epichlorohydrin, and ethylene dibromide), EPA proposed not to list residuals from their use as solvents, because the data collected by EPA showed that these chemicals are extremely unlikely to be used as solvents. One of the chemicals (p-dichlorobenzene) is a solid at room temperature, and the other three (benzyl chloride, epichlorohydrin, and ethylene dibromide) are relatively reactive chemicals not well suited to solvent use. EPA's information showed that the very limited solvent use reported for these four chemicals is linked to bench-scale or experimental laboratory settings, and no significant solvent uses were found. For more detail see sections II.N through II.Q of the proposed rule (61 FR 42347) and background documents supporting the proposed rule (RCRA Docket number F–96-SLDP-FFFFF).

B. Summary of Risk Assessment Supporting the Proposed Rule

As described in detail in the proposed rule (see 61 FR 42322–42327), EPA carried out various analyses to determine the potential risk that might arise from the disposal of the spent solvent wastes under study. In carrying out the modeling for these assessments, EPA used available data it collected from industries using these solvents. The Agency used information gathered in the RCRA 3007 Questionnaires and site visits related to the waste characteristics, waste management practices, and potential pathways for release and exposure. EPA used other generic input parameters to fate and transport models to estimate the risk a waste might present under management scenarios known to occur. The data used in the modeling efforts included the concentrations and toxicity of the solvent constituents in the waste, the mobility and fate of such constituents in different disposal scenarios, likely exposure routes under these scenarios, and the location of receptors that might be exposed.

The levels of receptor exposure estimated from modeling were compared with toxicological benchmarks to evaluate the potential health impacts. For noncarcinogenic constituents, EPA used reference doses for ingestion exposure (RfDs) and reference concentrations for inhalation exposure (RfCs); these are measures of acceptable daily intakes for a specific chemical. To assess the hazard to a hypothetical individual, EPA used hazard quotients (HQs). An HQ is the ratio of the modeled exposure (or dose) received compared with the acceptable daily dose (the RfC or RfD). An HQ above one indicates that exposures may occur above acceptable levels. For carcinogenic constituents, EPA compared exposure levels to carcinogenic potency estimates (carcinogenic slope factors, or CSFs) to calculate specific risk levels. The carcinogenic risks results are expressed in terms of individual risk, reflecting the additional incidence of cancer that may occur in an exposed population. For example, a risk of 1×10^{-5} (which will be presented in this document as 1E–05) corresponds to a probability of one additional case of cancer for every 100,000 people exposed.

EPA used verified RfDs, RfCs, or CSFs when available in EPA's Integrated Risk Assessment Information System (IRIS). IRIS, which represents a consensus opinion of EPA health scientists, is a database of human health effects that may result from exposure to various substances found in the environment. For the chemicals that did not have complete verified IRIS data available (2-methoxyethanol acetate, cyclohexanol, phenol, and isophorone), EPA calculated provisional values when needed for use in the listing determinations.

EPA performed a number of different types of risk analyses. First the Agency completed a ''bounding analysis'' to screen out solvent wastes from further consideration. In this analysis, the key input parameters were set to their ''high-end'' values (typically the 90th percentile point on the distribution of values available for each parameter). For solvent wastes that did not ''bound out,'' EPA then ran a high-end ''deterministic'' sensitivity analysis to determine which high-end input parameters result in the greatest risk. EPA calculated risks for all combinations when the most sensitive parameters were set at high-end values and then used the highest ''high-end'' risk. In this way, EPA attempted to estimate ''high-end'' risks that were somewhere above the 90th percentile, i.e., the risks would be below this level for at least 90% of the population at risk. EPA also calculated ''central tendency'' risks, which correspond to the risk when all input parameters were set at their median value.

Critical decisions for risk assessment include EPA's determination regarding which waste management scenarios to model and how to use the information on waste volumes and solvent concentrations disposed as modeling input. The Agency's modeling focused primarily on potential releases from wastes managed in aerated tanks, stored in open tanks, undergoing thermal treatment, and managed in surface impoundments. Modeling was based on the information EPA collected from facilities, including quantities of wastes managed. For each management scenario, EPA evaluated the full range of direct and indirect pathways through which the solvents could affect human health or the environment. Based on the physical and chemical properties of the constituents of concern and plausible management practices, certain routes of exposure for some scenarios were not considered to pose threats and were not further evaluated.

In general, solvent wastes fell in several major categories. Wastewaters were typically diluted aqueous wastes that are managed in a biological treatment system (usually in tanks). Nonwastewaters includes two subcategories. These include: (1) wastes with high levels of solvents or other organic chemicals, which were sent for thermal treatment in incinerators, industrial boilers, or fuel blenders, and (2) treatment residuals, such as wastewater treatment sludges or incinerator ash, which contained negligible levels of solvents.

EPA modeled storage in an open tank and thermal treatment for nonwastewater spent solvent residuals from use of all of the ten solvents. EPA modeled wastewater treatment in

aerated tanks for wastewater residuals resulting from the use of acetonitrile, 2-methoxyethanol, 2-ethoxyethanol acetate, phenol, furfural, and cumene as solvents.

The surface impoundment scenario was assessed for five of the solvents; acetonitrile, phenol, cumene, furfural, and methyl chloride. For acetonitrile and cumene, the headworks concentrations (i.e., the concentrations after the spent solvent was mixed with other wastewaters at the headworks of the wastewater treatment system) potentially discharged to surface impoundment were below the health-based levels for these constituents, and thus were not evaluated further. For phenol, three wastewaters with spent phenol were reported to be managed in surface impoundments that are part of a wastewater treatment train. In two of these cases, the phenol concentration was below the drinking water health-based level after mixing at the headworks, prior to reaching the surface impoundment. In the third case the stream had levels ranging above the health-based level; however this level is expected to be efficiently treated by the activated sludge, such that little phenol would be available for release to groundwater. For methyl chloride, EPA modeled air releases from treatment in a surface impoundment, but not the groundwater pathway because the impoundment was a permitted hazardous waste management unit. (As described below, the unit treating methyl chloride wastes was unique due to the highly specialized nature of this solvent use). EPA modeled treatment in a surface impoundment for furfural; however, bounding analyses showed no significant risks via air or groundwater pathways. The solvent use of the chemicals modeled in surface impoundments are very specialized. This means that they have properties that only allow very particular solvent uses in a very narrow set of circumstances and only for some industries, or even for only one. For example, methyl chloride is a gas at room temperature, which severely limits its utility as a solvent. The only significant solvent use for this chemical is as a solvent in the polymerization of butyl rubber, during which methyl chloride is passed through aluminum chloride to form and solubilize the catalyst used. The chemical's special ability to generate such a catalyst solution is why it is used. Similarly, by far the largest solvent uses of furfural and phenol are in the extraction of a high molecular weight oil (lubrication oil) during petroleum refining; these chemicals have very limited solvent uses outside the petroleum industry. Therefore, EPA has a high degree of confidence that the concentrations of chemicals in the streams flowing into surface impoundments studied in this listing determination are representative of the universe of such uses and possible exposure scenarios.

The landfill scenario was initially assessed for acetonitrile, methyl chloride, cumene, and cyclohexanol, but not modeled for spent solvent residuals from any of these solvents because the concentrations in the wastes were ''trace'' or ''negligible.'' Further general background for the risk assessment is provided in the preamble to the proposed rule (see 61 FR 42318).

III. Peer Review of Calculated Toxicological Benchmarks

Standard inhalation toxicological benchmarks were not available to EPA for four of the solvents when the Agency was conducting the risk assessment for the proposed rule. The Agency therefore calculated values specifically for the rule. EPA has labeled these toxicological benchmarks ''provisional RfCs'' to clearly differentiate them from the Agency consensus values listed on IRIS. During the comment period, EPA solicited peer review of these calculated risk values. The peer review reports and the complete Agency response to the reports are in the docket for this rulemaking.

In response to comments received in the peer review reports, EPA adjusted three of the provisional toxicological benchmarks used for this risk assessment. The changes are shown in Table 1.

TABLE 1.—CHANGES IN TOXICOLOGICAL BENCHMARKS FOR AIR PATHWAY

Solvent	NOAEL [1] (mg/m^3)	Previous provisional toxicological benchmark (mg/m^3)	New provisional toxicological benchmark (mg/m^3)
Cyclohexanol	0.06	0.00006	0.00002
Phenol	19	0.019	0.006
Isophorone	37 (LOAEL) [2]	0.0037	0.012

[1] No observed adverse effect level.
[2] Lowest observed adverse effect level.

The new benchmarks for cyclohexanol and phenol reflect additional uncertainty factors to account for insufficient toxicity databases. The benchmark for isophorone reflects a reduction in overall uncertainty factors to reflect Agency guidance limiting such factors to a total of 3,000. Full documentation of the methodology for developing these benchmarks is in the docket for this rulemaking.

In addition, the toxicological values for cumene were changed on IRIS during the comment period. The RfD (for noncancer ingestion risks) was changed from 0.04 mg/kg/day to 0.1 mg/kg/day. The RfC (for noncancer inhalation risks) was changed from 0.009 mg/m^3 to 0.4 mg/m^3. These changes both reflect greater tolerance for cumene than the previous benchmarks and thus have no impact on EPA's decision not to list wastes derived from the use of this chemical as a solvent.

The Agency has employed these revised ''provisional RfCs'' for all the updated risk assessments involving these solvents for the final rule. In addition, the Agency has re-estimated risks assessed for the proposed rule using these new benchmarks. Documentation of these re-estimations appears in the supplemental risk assessment background document to this final rule. The final risk estimates for all the solvents are shown in Table 3 of this preamble.

In all cases the changes to the toxicological values do not have any significant impact on EPA's risk results, nor do the changes affect any listing decisions. The solvent wastes for the chemicals examined still do not pose significant risks, and thus, these analyses confirm the proposed decisions not to list these wastes.

IV. Summary of Response to Comments and Rationale for Final Rule

The Agency is responding in this preamble to the most significant comments received in response to the document of August 14, 1996, 61 FR 42318. Other comments received by the Agency are addressed in the document entitled Hazardous Waste Listing Determination: Spent Solvents, Response to Comments (hereafter known as Response to Comments Document) that is available in the docket associated with this rulemaking.

The Agency is responding to a variety of comments concerning data collection, methodology, risk assessment scenarios, and issues specific to each chemical in this listing determination. The responses, while touching many specific aspects of the listing determination effort, involve three major themes:

- The Agency used a very thorough survey, which characterized the risks of the spent solvents. The Agency researched various potential applications of these chemicals as solvents and found that solvent uses are confined to a limited set of industrial applications. Data collected from the questionnaires confirmed the general lack of wide solvent use, and are consistent with EPA's search of the literature. These findings allowed the Agency to consider the applicable waste generation and management practices, and define plausible management scenarios for use in evaluating potential risks associated with these solvent wastes.
- Facilities use the solvents for specific purposes that vary by the desired process. Some of the solvents in this listing determination have different applications over certain industries (i.e., acetonitrile). Even within one industry, the primary commonality among the processes is the solvent constituent itself. Other solvents were used in very limited ways and their primary uses were highly specialized (e.g., furfural). However, even for solvents with specialized uses, other minor uses were typically reported for different industries and processes. The resulting potential variability in waste compositions led the Agency to focus its efforts on evaluating the solvent constituent itself. The Agency believes it has captured the risks that arise from the solvents themselves, and that this is a reasonable approach to fulfilling its listing determination obligations.
- Little to no benefit would accrue from regulating these wastes because many are already regulated and treated as hazardous wastes. These solvent wastes, particularly nonwastewaters with a high organic content, are characteristically hazardous or mixed with other listed wastes, and are generally thermally treated. Other nonwastewaters, such as wastewater treatment sludges or filter media, do not contain measurable levels of the solvent constituents, and thus present no significant risks.

A. Data Collection

1. Representativeness of Industry Characterization

One comment argues that EPA cannot fully characterize industry solvent management practices because the facilities that may be affected are too numerous to predict and specifically identify. Therefore, the Agency should project standard mismanagement scenarios in order to examine the full range of actual and potential waste management practices applicable to the wastes. This is the only way the Agency can discharge its mandate to protect human health and the environment.

In response, EPA disagrees that it is not possible to predict and identify, as a practical matter, the facilities that may be affected. It is possible and appropriate to do so and EPA has, in fact, accomplished that purpose, as summarized below and explained more fully in the Response to Comments Document. The Agency outlined the general approach to the data collection process in the proposal (61 FR 42321–42322). To summarize, the Agency began collecting data on all 14 chemicals involved in the listing determination (plus the seven in the Solvents Study) as a means of collecting background information on these chemicals. The Agency identified solvent uses through cross-referencing SIC codes in known and suspected process industries with data found in the TRI, Office of Water facility lists, and many other data sources. The Agency used many different facility address lists to create a list of potential solvent-using facilities.

The sources used by the Agency provide a comprehensive view of the types of uses of these chemicals as solvents and the quantities used. The Agency identified industries using the 14 chemicals as solvents by conducting literature searches including Chemical Abstracts, the Chemical Engineering Handbook, the Industrial Solvents Handbook, and the SRI Chemical Economics Handbook. As today's document and the associated background documents explain, the process was a logical, iterative, step-by-step process. The chemicals in question are not likely to be widely used as solvents (with the exception of acetonitrile and, to a more limited extent, 2-methoxyethanol, which have significant solvent uses in some industries), because they have properties that limit their use to specific situations, and are generally noncompetitive in price. In addition, the Agency's data collection methodology combined a comprehensive view not only of the chemical's solvent use, but also of nonsolvent uses to confirm use data. The specificity of applications for these solvents, while sometimes cutting across more than one industry, is still limited enough that the listing determination could stay focused on the actual management scenarios found through questionnaires and site visits. The Agency is confident that the waste management practice data found in this investigation are adequate for risk assessment modeling, and that using other modeling practices not found would only lead to using hypothetical waste data that do not represent any activities that resemble reality. To engage in this kind of hypothesis would be likely to result in forcing significant additional costs on the public with no incremental risk reduction from regulating the wastes in question. The Agency notes that no commenter identified any specific solvent users of these chemicals not already found by the Agency. Also, the commenter could not suggest any alternative to the Agency's methodology other than a listing based on hypothetical uncertainties—an approach not justified by the data.

The Agency sent almost 1,500 preliminary questionnaires asking facilities how much of each chemical was used as a solvent in 1991 and 1992. The data showed that the Agency was successful in identifying many solvent users, although more than 900 facilities were eliminated from further consideration because they did not use any of the chemicals as a solvent. The Agency was also able to eliminate another 400 facilities from consideration to receive the final questionnaires due to reporting errors, discontinued use, or reported use of small quantities of the solvents. The fact that the vast majority of facilities that received the preliminary questionnaire reported no solvent use supports EPA's view that many potential solvent users, in fact, do not use these chemicals this way. The Agency found that reported uses of very small quantities of the chemicals as solvents were often inaccurate, but facilities reported these quantities to err on the side of caution. The remaining

156 facilities received a large, detailed questionnaire requesting information on solvent uses and waste generation and management practices. The listing determination is based on these data.

The details of the data collection effort also brought another point to the Agency's attention. While other solvents are used in countless industries and facilities and would be difficult to characterize, the particular set of solvents in this listing determination has much more limited applicability. EPA's literature search found these chemicals to have many and varied ''nonsolvent'' uses. Data collected from the questionnaires confirmed the general lack of wide solvent use, as discussed below.

While reference sources (e.g., SRI Chemical Economics Handbook) indicated many of these chemicals are produced in fairly high quantities, these references reported significant quantities used as solvent for only four of the fourteen chemicals studied: acetonitrile, 2-methoxyethanol, furfural, and methyl chloride. This is consistent with what EPA found in its 3007 Survey for these four chemicals. Furthermore, as described in the Listing Background Document and the proposed rule, the solvent uses of furfural and methyl chloride were limited to a single specialized use in each case, and these users were fully surveyed. Solvent use quantities were not reported in reference sources for the other ten chemicals. Four of the ten were those for which EPA also found no solvent uses (benzyl chloride, epichlorohydrin, ethylene dibromide, and p-dichlorobenzene). For an additional four, EPA's Survey found that the amounts of the production quantities used as a solvent were small compared to total production (cumene-0.026%; cyclohexanol-<0.1%; 2-ethoxyethanol acetate-1.2%; isophorone-1.7%); this is also consistent with the lack of significant quantities of solvent use reported in reference sources.

The remaining two chemicals are special cases. The domestic production of 2-methoxyethanol acetate is reported to have ceased, and the small volume of total solvent use found by EPA in its Survey (1,673 kg/year) confirms the lack of significant solvent use. EPA did find significant solvent use of the final chemical, phenol, which was not reported in most other reference sources. However, nearly all (>99%) of the solvent use quantity found in the Survey was from one facility that produces phenol for its own captive use. This ''native'' phenol is produced as a byproduct of other processes, and would not be reported in production or use data in reference sources. Leaving out this volume from one facility, EPA's Survey shows that the fraction of phenol production that is used as a solvent is low (<0.2%), which is consistent with the lack of any significant solvent use quantities reported in reference sources. In any case, the vast majority of phenol solvent use reported in the 3007 Survey was a very specialized use; the petroleum industry uses phenol to extract lube oil from residual oil. EPA surveyed all petroleum refiners in its Survey; thus EPA is confident the Survey captured all major solvent users for this chemical.

The Agency disagrees that it should project standard mismanagement scenarios not indicated by the data, because the rationales for selection of a particular set of plausible management scenarios are specific to each solvent. Based on the general rationale just discussed and the data for each of the chemicals as given in detailed discussion in the Response to Comments Document for each of the chemicals, the Agency has confidence in the data set as the best available effort to assess the chemical use universe and actual waste generation and management scenarios. Merely developing hypothetical waste generation and management scenarios, as suggested by the comment, has no sound basis in fact. This would lead to the danger of over regulating risks that do not exist and siphoning off scarce resources to deal with those non-risks, rather than risks that may be more worthy of the public's attention.

For these solvents, the Agency has no reason to project management scenarios beyond what was found through questionnaires and site visits. The Agency found the vast majority of wastes managed in tanks and incinerators. Where a waste was managed in a surface impoundment, the Agency performed that modeling under high-end exposure assumptions. The Background Document to the proposal and the Response to Comments Document both present more detailed assessments of how each individual chemical is used, what wastes are generated, and what management scenarios were selected. For example, no management scenarios were selected for p-dichlorobenzene, epichlorohydrin, ethylene dibromide, and benzyl chloride because none of these chemicals are used as solvents. For most other chemicals, the uses are extremely limited and specific. See the sections devoted to the individual chemicals for specific rationales, and the discussion of management scenarios in section IV.B.4.

Below, EPA responds to the specific issues raised in comments that the Agency's survey was inadequate to characterize the solvent uses and mismanagement scenarios.

One commenter pointed out that EPA surveyed only a small percentage of facilities within very few SIC codes. The commenter stated that for several solvents, the quantity of sectors potentially affected outnumbers the quantity of facilities forming the basis for EPA's plausible mismanagement conclusions. As an example, the commenter stated that for 2-methoxyethanol acetate, EPA identified seven industrial sectors potentially affected by this chemical, but sent only the questionnaire to three facilities using the solvent.

The Agency disagrees with this comment. As previously mentioned, this listing determination covers 14 chemicals used as solvents. In order for the Agency to determine the universe of facilities potentially affected by this listing determination, it sent out preliminary information surveys to obtain basic solvent use information. The Agency sent this survey to nearly 1500 facilities based on an evaluation of chemical usage. Given this large universe of facilities and the potential to obtain useful information on solvent use in this mailing, the Agency also decided to include in this preliminary questionnaire questions concerning seven other chemicals (in addition to the 14 already included in this listing determination) which it was also investigating under a Solvent Study mandated by the court.

The prequestionnaires showed that about 600 facilities reported any possible use of one or more of the chemicals as solvents. The Agency conducted further evaluations and screening and identified 156 facilities to which it sent the more detailed ''full'' questionnaire concerning the use of the 21 chemicals as solvents (14 for this listing determination and 7 for a separate Solvents Study). Thus, only about 10% of the facilities that were sent preliminary questionnaires used significant amounts of these chemicals as solvents. As described in today's document in response to other comments, this screening removed facilities that did not use the chemical as a solvent (as defined by EPA), and small volume users. For a more detailed description of this screening and evaluation see, please refer to section III.A in the Response to Comment Document for this rulemaking.

The results of this final questionnaire showed that 4 out of the 14 chemicals in this listing determination were not

used as solvents and that 10 of the 14 chemicals were used a solvents to varying degrees. The industry sectors listed by SIC code by the commenter are ones which typically do not use any of the 14 chemicals as solvents and, thus, did not yield data to be considered in evaluating plausible management scenarios. Further, as discussed earlier in this section, all other indications from the Agency's survey show that the amounts of solvent use EPA found were generally comparable to the solvent use found in other references. The volume of solvent use found by the Agency is also consistent with what the Agency knows about the likely technical usefulness of these chemicals as solvents. A limited set of industries exists in which these chemicals are used as solvents, as discovered through standard reference sources.

The commenter presented a plethora of small companies on the SIC code list that operate on lower margins. The Agency believes that these companies are not likely to use these higher cost chemicals for generic solvent use processes. The Agency believes that if any of these chemicals had been used as solvents in other industries, as the commenter postulates, the Agency would have found this information during its data collection. The facilities surveyed by the Agency share many processes with the large number of smaller facilities in the lists presented by the commenters (equipment cleaning, electroplating, etc.). However, the chemicals at issue are rarely, if ever, used as solvents in those processes in the facilities found by the Agency.

Also, the Agency recognizes that the commenter cites a greater number of facilities within each SIC code than the number to which EPA has sent questionnaires. These facility numbers are obtained from a data base (Dun & Bradstreet) that is not linked to chemical use. Many of the addresses represent corporate headquarters, not facilities that use or generate hazardous waste, and a single facility may have more than one Dun & Bradstreet number. Therefore, EPA believes that the number of facilities reported within each SIC code based on this data is exaggerated.

The commenter cites 2-methoxyethanol acetate and methyl chloride as examples, stating that ''EPA identified seven industrial sectors potentially using 2-MEA, but only three facilities using the solvent received the final questionnaire.'' As presented in the background document, 14 facilities received the full questionnaire based on their response to the preliminary questionnaire. However, based on their response to the full Survey, 11 of these 14 facilities discontinued use of 2-MEA or did not use it in a manner that met the regulatory definition of solvent use. Only two industries reported using 2-MEA in 1994 that met the definition of solvent use. The commenter further states ''In the case of methyl chloride, EPA identified eight SIC codes potentially using the solvent, while only seven facilities received the final questionnaire.'' As presented in the background document, 32 facilities received the full questionnaire based on their response to the preliminary questionnaire. However, based on their response to the preliminary questionnaire, 24 facilities were TSDs, and as a result the chemical consumption reported could not be linked to solvent use. Other facilities did not use methyl chloride in a manner that met the definition of solvent use, or used extremely small volumes (less than 1 kg) that generated wastes with no methyl chloride. Thus, this left only four facilities that reported solvent use of methyl chloride in two industries, and essentially all of this use was in the synthetic rubber manufacturing.

One commenter stated that EPA chose to review chemical abstracts for only a four-year period, and for other solvents limited the search to a 10-year period. Therefore, older uses of the solvents would not have been identified through the literature search. The commenter also states that newer or less studied solvent uses would not appear in the public literature. The commenter disagrees with the Agency's assertion that few, if any, solvent uses were missed using this method.

In response, the Agency does not believe that searching Chemical Abstracts for an unlimited time period for all 14 solvents is justified. If a process was developed more than ten years ago and is still in use today, it would appear in more recent Chemical Abstracts or be reflected in alternative data sources, such as Effluent Limitations Guidelines or the SRI Chemical Engineering Handbook. Furthermore, the further back the search is conducted, the more unlikely that the use identified will still be employed today. Newer solvent uses, if confined to small scale laboratory use, would not change the solvent use universe significantly and would be reported as laboratory waste (and managed accordingly, most likely as a hazardous waste because spent solvents exhibit a Characteristic or contain listed wastes). Once such a process enters large-scale commercial use, reporting generally appears on some standard database or literature source that the Agency would find. The probability that a solvent use would, in one year, not exist and then appear in large scale is extremely low. Small volume solvent uses of these chemicals are not critical to EPA's evaluation, because any risks from larger volumes usage (and corresponding larger loadings in wastes) are likely to be of greater concern. Most of the companies that would conduct the types of research and development to find new uses are generally reporters to databases like the TRI, and as such, would report any significant uses of these solvents.

The commenter also stated that some chemicals, such as cyclohexanol, furfural, and isophorone, are not reported under TRI. For the remaining solvents, TRI reporting is not required when chemicals are ''otherwise used'' in quantities of 10,000 pounds or less (equivalent to 4,540 kg or less). The commenter argued that substantial quantities of the solvents can be used and not reported under TRI.

In response, in cases of the three chemicals for which the TRI data base was inadequate, the Agency relied on other sources more heavily. In fact, the TRI was only one source for all chemicals in the listing determination, even those covered by TRI. Because the Agency was aware that these chemicals were not required to be reported pursuant to TRI at the time of the solvent use industry characterization, the Agency relied on additional sources cited in the Listing Background Document. Through literature searches, potential solvent uses were identified in several SIC codes for cyclohexanol, furfural and isophorone.

Moreover, since the questionnaire data were collected, the Agency added cyclohexanol to the TRI. Analysis of TRI chemical use data on cyclohexanol confirms the Agency's literature search and determination of the universe of users of this chemical as a solvent. While 24 facilities reported cyclohexanol manufacturing processes in the TRI, only one facility reported the ''otherwise use'' category of cyclohexanol that could potentially be solvent use. Thus, the TRI data show that the Agency might have sent out only one additional preliminary questionnaire (EPA received 37 responses to preliminary questionnaires for cyclohexanol). Further investigation by EPA revealed that cyclohexanol was not used as a solvent at this one site. This new information substantiates EPA's original findings that there are no other large users of cyclohexanol as a solvent. See section III of the Response to Comments Document in the docket for details of the new TRI information.

The commenter argued that many of the solvent uses EPA did identify involve extremely high concentrations of the chemicals, up to and including pure solvent. These pure solvent uses can generate wastes in quantities 100 times larger with concentrations of 1%, still significantly in excess of concentrations that may pose a substantial risk to human health or the environment.

The Agency disagrees with the commenter that the risks of concern were not analyzed. In fact, the Agency's modeling considered environmental loadings of these chemicals resulting from solvent uses ranging from 100 percent to the part-per-million (ppm) level. The Agency evaluated potential releases of high percentage solvent uses that lead to greater loadings than would result from a one percent level in the waste. Modeling of these chemical releases under high end exposure conditions did not result in risks of concern.

In response to the commenter's concerns that small volume users might generate wastes of concern, perhaps due to different management practices, the Agency examined the data in hand from the Survey for such users. Facilities that received Surveys due to significant use of some solvents (>1,200 kg/yr), also used other solvents in lower volumes in some cases. Thus, the Agency has data on wastes from facilities that used small volumes of solvents, (see Listing Background Document, Appendix I). EPA reviewed the management practices for wastes generated by these smaller volume uses to see if any differences were evident. For all 10 solvents, EPA found a total of 73 wastes that were generated from solvent uses below 1,200 kg. The Survey data show that these were managed in ways that were very similar to practices reported for larger volume uses. Of these 73 wastes, 69 were incinerated or otherwise thermally treated (nearly all were classified as hazardous because they exhibited a hazardous Characteristic, or due to the presence of other listed hazardous waste), three wastewaters were treated in tanks, and one wastewater was treated in a surface impoundment (the chemical in the impoundment, acetonitrile, was evaluated through modeling). Furthermore, 67 of the 73 wastes reflected solvent use at concentrations of 50–100%, i.e., many of these wastes were generated from use of solvents at high concentration. None of these wastes from small volume users present any special risk, because risk analyses using larger loadings going to these management practices found no significant risks. Therefore, the existing data support EPA's belief that wastes from small volume users are not of any special concern. Furthermore, these wastes are nearly all handled as hazardous, which is also consistent with the general pattern found for other larger volume wastes.

Two commenters stated that they agreed with EPA's decision to limit the solvents listing investigation to facilities that use a combined total of 1,200 kilograms or more per year of all chemicals of concern used as solvents because the commenters feel that this level represents a reasonable characterization of the universe of solvent users. One of these commenters requested clarification to ensure this approach would not be misconstrued by hazardous waste generators when determining their generator category. In response, the Agency is confirming that the cutoff categories used by the Agency in this listing determination are not to be construed by any actual or potential hazardous waste generators to be a means of determining waste generator categories. Furthermore, EPA did consider solvent uses below the 1,200 kg threshold as noted above, however, the Agency found that such small quantity use is highly unlikely to present risks of concern when compared to the risks from larger users.

However, another commenter stated that EPA's rationale for deleting facilities using 1,200 kg or less of solvent in 1992 was that only large quantity solvent users could be expected to have treatment, storage, and disposal (TSD) units on-site, and that many of the solvent uses are peculiar to large companies. The commenter stated that this limitation in the data collection introduces bias against solvent generators relying upon commercial services, including offsite nonhazardous landfills, for their waste management needs. The commenter then argued that the Agency cannot assume offsite disposal in a nonhazardous waste landfill is rarely practiced when EPA intentionally excluded those facilities most likely to use such facilities by not surveying smaller volume users.

The reasoning cited by the commenter is taken out of context and does not reflect EPA's rationale. EPA did not decide to eliminate small volume users because they would not have on-site treatment capabilities. Rather, EPA determined that the burden of completing a complex, 100-plus page questionnaire would not be commensurate with the value of the information EPA would receive. EPA would not gain useful information from small users because many of these facilities, if they use these chemicals as solvents at all, would present low risks compared to larger solvent users. Furthermore, as noted above, EPA did, in fact, capture small users of solvents in the full Survey, and found no special management or risk concerns that were not reflected in it evaluation of larger solvent users.

Facilities are likely to use on-site as well as off-site waste management practices, and sometimes a combination of the two. This is evidenced in responses to the 3007 Survey, wherein respondents indicated that both on-site and off-site practices were employed. The 3007 Survey has captured numerous facilities that use commercial services. Based on the results of the Survey, 62 percent of the wastestreams are managed in commercial offsite treatment or disposal units. As such, the Agency does not believe there is any significant bias in its Survey.

In addition, EPA points out that the vast majority of small solvent users eliminated by EPA reported using amounts well below the 1,200 kg threshold. In fact more than 90% of those eliminated reported used less than 120 kg total for all of the solvents studied. EPA found that uses of such small volumes typically were reported for laboratory uses, are difficult to verify, and may be reported as solvent use if laboratory uses are not known. The 1,200 kg/yr cutoff is an appropriate surrogate for identifying facilities that may potentially generate large amounts of hazardous waste or waste with high solvent loadings. EPA believes the facilities with larger solvent uses would be most likely to provide useful data through the questionnaire, i.e., data based on verifiable solvent use that could then be used in developing risk assessments.

One commenter argued that solvent use fluctuates from year to year, thus uses below 1,200 kg could increase dramatically in the future due to process changes, increases in production, or solvent substitutions. The commenter went on to state that use volumes for some solvents reported in the final questionnaire for 1993 were higher than the rates reported for the same facilities in the preliminary questionnaire for the prior year. The commenter stated that EPA fails to appreciate the consequence of these fluctuations and substantial changes can be expected from year to year, e.g., a facility using less than 1,200 kg of solvent one year may use more than that amount the next year. The commenter concludes that EPA lacks an objective basis for simply assuming the data it collected is fully dispositive with

respect to future solvent uses and management practices.

EPA believes that the data collected provides a reasonable bases for decision-making. The purpose of the preliminary questionnaire was to capture what occurs at the facilities surveyed during a typical year. As was expected, some facilities' solvent use consumption decreased between the two years and other facilities' solvent consumption increased between the two years. The Agency does not expect solvent consumptions to be identical from year-to-year, but has no data to indicate that 1993 is an atypical year. Even if the specific facilities meeting the cutoff varied from year to year, EPA believes the data gathered from facilities studied provide a representative database. The Agency used the most recent data when determining the 1,200 kg cutoff for those facilities receiving the full questionnaire.

EPA considered whether or not solvent management practices were likely to change in the future from those reported in the 3007 Survey. The Agency determined that there was no reason to believe that they would, regardless of the volume fluctuation. In the case of wastewaters, EPA has no reason to believe that a facility would convert from a tank-based system to a surface impoundment given the capital investment and liability issues associated with land-based treatment, particularly when facilities do not have the physical space for a surface impoundment or have closed surface impoundments in favor of tank-based systems. For nonwastewaters, EPA has no reason to believe that a facility would switch from the thermal treatment of high organic wastes to disposal in a nonhazardous landfill due to the BTU value and the liability issues associated with land-based disposal.

The Agency cannot accurately predict with specificity future uses of the fourteen chemicals, nor is it reasonable for EPA to regulate solvent waste based on some purely hypothetical future use. While the solvent consumption may change over time for some facilities, such fluctuations are unlikely to significantly affect EPA's current risk conclusions for several reasons. First, in its risk analyses EPA used high-end or maximum solvent loadings to project potential risks. Thus, EPA's evaluation is not likely to change due to some volume use fluctuations. In addition, for most of these solvents (and specifically for three noted by the commenter, acetonitrile, 2-methoxyethanol acetate, and isophorone), the vast majority of wastes are regulated as hazardous due to the hazardous waste characteristics (see 40 CFR 261.20–261.24) or mixing with other listed wastes. Thus, any increase in volume use would result perhaps in somewhat higher solvent quantities reaching wastes that would be already regulated and thus unlikely to pose significant risk. Therefore, while EPA agrees that its Survey is more-or-less a ''snapshot'' of waste generation data, the Agency continues to believe that such an approach has yielded data that are representative, and is a reasonable way to assess potential risks.

The commenter also stated that EPA excluded any laboratory uses of the solvents from the universe of facilities receiving the preliminary questionnaire, notwithstanding the Agency's observation that ''lab use'' of chemicals was not restricted to small volumes.

The Agency did not exclude laboratory uses of solvent from the universe of facilities. The Agency was precluded from sending a 3007 Survey to all laboratories due to the sheer number of labs that exist in the United States, approximately 183,000 according to an estimate by EPA. (For details please refer to the Response to Comments Document). Many of these laboratories are small, comprising research labs (12,500), medical laboratories (22,700), and university labs (108,000), as well as small analytical labs (40,000). The resources necessary to complete a RCRA 3007 questionnaire would be beyond the means of many of these small businesses as organizations. Nonetheless, the Agency captured the solvent uses and management practices of numerous (32) captive on-site laboratories of facilities who received the 3007 Survey. In doing so, the Agency captured large research, QA/QC, and analytical laboratories that operate at the same or larger scale as the small labs not surveyed. Approximately 38% of the laboratories captured were small laboratories (i.e., using <1,200 kg of solvent use).

The Agency found that in industrial facilities, the proportion of laboratory use of a solvent compared with the chemical process use is about 1% or less. After consulting with the American Chemical Society, college and university hazardous waste managers, standard references, and OSHA guidelines, the Agency determined that laboratory wastes are managed as hazardous because they are usually mixed with other hazardous wastes, often with acutely hazardous wastes. In addition, with the exception of acetonitrile (which has specialized uses in laboratories as a solvent for high pressure liquid chromatography, or HPLC), the reported use of any of these chemicals is suspect, and is attributable to facilities reporting ''solvent use'' in the questionnaires as a precautionary measure. Few of the chemicals under examination are likely to find extensive use as solvents in the laboratory. For example, very few of the standard laboratory test methods specified by EPA call for use of these chemicals as solvents. For a complete summary of the laboratory use of solvents please refer to the Response to Comments Document.

2. Engineering Site Visit Reports

One commenter stated that the engineering site visits were superficial and did not encompass a thorough review of waste management, solvent waste characteristics, and potential environmental releases or damage from waste handling. The commenter acknowledged that EPA's objective for the site visits was simply to determine if a facility should be sent a full questionnaire, and to educate the facility on the solvent listing process, but stated that this seems like a waste of effort, given that more valuable information could have been obtained from the site visits regarding waste properties, handling and environmental damages.

The commenter also noted that none of the visits involved any sampling efforts. No analytical or characterization data are presented on the concentrations of solvent constituents in the waste streams observed at the industrial sites visited. The visits were typically two hours, with anywhere from 0–60 minutes spent actually touring the facility. One site visit was conducted from a tour van and was strictly a ''windshield audit,'' and two were strictly conference room audits. The reports did not investigate, evaluate, or address any historical spills, releases to groundwater or surface water, or any other environmental damage from use of the solvent or handling of the wastes.

These comments misconstrue the reasons EPA conducted the site visits and the information that could practically be developed from them. The purpose of the site visits was to familiarize the Agency with the multitude of processes and industries potentially subject to the investigation through ''first person'' experience rather than ''textbook'' learning. The Agency disagrees that the Engineering Site Visits were superficial given their purpose of site familiarity, not data collection. The Agency points the commenter to the engineering site visits reports that each state EPA's objectives in undertaking the site visit—of which those cited by the commenter are but two. The site visits were performed to

obtain a first hand understanding of solvent utilization and also to develop a working relationship with the industries. Moreover, the site visits served as an outreach mechanism for EPA to interact with industry and inform potentially affected industries of the investigation. Site visits afforded EPA staff an opportunity to become familiar with processes used in specific industries, field test the questionnaire, and assess ongoing pollution prevention activities.

EPA obtained the ''valuable information'' cited by the commenter in a more comprehensive way through the questionnaires. EPA collected data on waste properties and management practices through the 3007 Survey, which contains detailed, site-specific information from 156 facilities. It would not be practical for EPA to visit all sites to gather detailed information on solvent use. Therefore, EPA's reliance on the 3007 Survey is eminently reasonable for collecting information on waste characterization data, release, and waste management practices. Visits conducted following the receipt of RCRA 3007 Questionnaires helped EPA to better understand the type of processes used in target industries and the data provided by respondents, and also provided confirmation of the data provided. The Agency was able to focus on larger scale users and specific processes up-close, based on the information reported in the 3007 Survey.

As discussed in detail in the Response to Comments Document, tours of the facilities lasted as little as 1.5 hours and as much as 3.5 hours, with a minimum of 30 minutes and a maximum of more than 2 hours spent on tour and/or on the plant floor. Information related to spills, releases and other environmental damage was requested in the 3007 questionnaire and collection of this type of information was not the focus of these visits. The Agency takes issue with the commenter's characterization of the visits as ''windshield audits.'' None of the site visits were mere tours from a van. The Agency personnel witnessed many operations on a site and were able to walk around the facility. The commenter also mischaracterized several other details of individual site visit reports. The Agency has corrected these misconceptions in the Response to Comments document and provided clarification to clear up any confusion, as necessary. For more detail on the sampling issue, please refer to section IV.B.2 of today's document.

B. Methodology

1. Definition of ''Solvent''

One commenter objected to the Agency's characterization of solvent use as too limiting, stating that solvents contained in paints, coatings, dyes, fuels, etc. are still mobilizing agents, and that they unleash the same environmental impact when these products are spilled or released. The commenter also points out that being able to solubilize or mobilize other constituents in a formulation still meets the Agency's definition of solvent use.

The Agency disagrees, and notes a long-standing policy of treating these cases differently. The discussion of the scope of the solvent listings and the applicable definitions appears in section I.B, above. As noted there, process wastes where solvents were used as reactants or ingredients in the formulation of commercial chemical products are not covered by the listing. The products themselves also are not covered. The commercial formulations in which solvents are often ingredients are generally products that are not wastes under RCRA. Where these products are not in some way already regulated, the Agency could examine these materials if they become wastes and if deemed necessary. However, with a backlog of listing determinations to complete under court-ordered deadlines, the Agency has focused its current efforts on those determinations required by law. The Agency is under direction from Congress to consider listing wastes from ''solvents'' and that direction has been incorporated into the Consent Decree. Thus, the Agency has focused its resources on the rather narrow set of risks described in this **Federal Register** document and the rulemaking record for this decision.

2. Lack of Sampling and Analysis

Two commenters objected that EPA performed no sampling and analysis of these waste streams. One commenter stated it is impossible for EPA to come to any listing determination without some independent sampling and characterization of these wastes. Useful characterization data could have been obtained by sampling wastes from a subset of the 156 respondents representative of all the SIC codes using the wastes, according to this commenter.

EPA does not agree that it would obtain useful information from independent sampling of the solvent wastes. The solvents listing determination covers a number of industries using different solvents for different purposes and in different ways. The greatest challenge would be in collecting a sufficient number of samples to characterize each of these uses. Assuming that EPA were to sample all 10 solvents, obtain both a wastewater and a nonwastewater sample, and gather samples from the industries using the solvents (at an estimate of three industries on average per solvent), the baseline number of samples required would be 60. In addition to baseline samples, to conduct a valid sampling exercise the Agency also would need to sample for variability, that is, the Agency would take samples at several locations within a single facility and would take samples at several facilities within an industry group using the same solvent. Assuming that an additional two samples are taken within the same facility, and then an additional two facilities are visited, the total number of required samples reaches 540. This number still might not allow EPA to fully characterize solvent wastes. Thus, the Agency would be spending scarce resources on a massive sampling effort, when the data need could be more efficiently obtained by methods other than independent sampling. While EPA could attempt a more limited sampling approach, the result would not be likely to provide a sound basis for making listing decisions.

By definition, the concentration of the solvent must be relatively high before use, and this would allow use of mass loadings in calculating maximum waste levels, as needed. The Agency felt that it could rely on the questionnaire data, and no information has been submitted in comments to show that sampling and analysis was needed to confirm the concentrations in the solvent wastes reported. The facilities provided ranges of concentration where concentrations within a waste stream varied. When data were reported as ranges, the Agency used the high end of concentration ranges as a conservative approach in its risk assessment.

The Agency does not have reason to believe that the solvent concentrations reported are underestimated. In many instances copies of laboratory data showing the solvent concentration(s) in a sampled residual were provided with the respondents' 3007 survey. The reported data seem reasonable and correspond with observations of residual streams during Engineering Site Visits. The solvent concentrations and residual volumes were further substantiated through mass balances performed on the solvent use processes by reviewing the 3007 survey responses (see section III.B of the Response to Comments Document). EPA evaluated the data contained in the 3007 Survey

responses for any inconsistencies or missing residuals. If any inconsistencies or missing residuals were found, a follow up phone call was made to the appropriate facility for additional information. Where applicable, this additional information can be found in the docket along with the 3007 Survey Responses. Therefore, the Agency feels comfortable that it can rely on the reported data to adequately characterize risk.

EPA has used 3007 Survey data extensively in the past in making listing determinations. In this case, each survey was signed by the responsible party to indicate that the information reported is accurate. The Agency does not have reason to believe that the facilities would falsify or omit any of their data in light of the substantial penalties for submitting false information. In instances where concentrations were unclear or unreported, telephone contact was made with the facility.

Two commenters stated that EPA is required to consider the presence of any hazardous constituents, not just the solvent itself, because other hazardous constituents may be present in the waste due to impurities, other chemicals used in the same processes or managed in the same equipment as the solvents, and chemical reactions occurring in such processes or equipment.

EPA does not agree that the Agency is required to consider other constituents present in the wastes examined. Indeed, due to the extreme variability of these other constituents in the solvent wastes across industries, EPA would undoubtedly find it impossible to categorize these wastes under 40 CFR 261.11(b) if it considered the other constituents. The solvent uses found for acetonitrile illustrate this problem graphically. Acetonitrile is used as a solvent in various industries, including pharmaceuticals, petrochemicals, photographic chemicals, and other chemical manufacturers (see the Listing Background Document, section 4.0). The actual uses of acetonitrile also are variable, and include uses as a reaction medium for the synthesis of numerous different chemicals, and as chromatographic eluent for analytical or preparative separation of various chemicals from different impurities. Wastes resulting from such widely varying processes across different industries cannot be expected to have consistent waste constituents, except for the solvent itself.

As the commenter pointed out, other constituents could originate from various sources in the use of a solvent. Thus, other constituents are dependent on other solvents used, the specific solvent use, other processes carried out at a facility, other wastes that may be generated from other processes onsite, etc. Because of the wide variability in waste constituents that might arise in wastes from use of the solvents, the Agency focused on the solvent chemical itself. Other constituents may vary widely for different industries and solvent uses; thus, the Agency believes the only practical approach to evaluating such wastes for potential listing is to consider the risk posed by the solvent chemicals under examination.

The language in the existing F-listed solvents illustrates EPA's special concern with the solvents themselves in defining the scope of the listings; the listings are applicable only to wastes derived from the use of the solvents at levels of ten percent or more. In the case of the current solvents rulemaking, the Agency evaluated the common set of chemicals, i.e, the 14 solvents of concern. The Agency's assessment of these 14 solvents shows no risk to human health or the environment from these wastes, as discussed in detail elsewhere in this document.

3. Consistency of Methodology With Other Listing Determinations

One commenter asserted that, contrary to EPA's claim, the listing determinations in today's rule were based on scenarios that are different from those EPA used in both the proposed Dyes and Pigments listing determination (59 FR 66072, Dec. 22, 1994) and the proposed Petroleum Refining Process waste listing determination (60 FR 57747, Nov. 20, 1995). The commenter stated that in the Dyes and Pigments proposal, EPA used plausible mismanagement scenarios of disposal in unlined municipal landfills and on-site monofills, in addition to other plausible scenarios (wastewater treatment tanks, industrial boilers). The commenter stated that in the Petroleum Refining Waste determination EPA also considered plausible mismanagement scenarios, including disposal in on-site and off-site Subtitle D landfills. The commenter argued that EPA did not follow the policy used in the Dyes and Pigments and Petroleum Refining rules in the proposed solvent listing because EPA did not consider mismanagement scenarios that reasonably could be employed, particularly land disposal in unlined landfills. The commenter stated that there is nothing that prevents a solvent waste generator from land disposing the solvent waste, and substantial evidence of land disposal practices was found in the docket to the proposed solvent rule.

In response, EPA disagrees that the methods for determining plausible management scenarios in this rule is inconsistent with either the proposed Dyes and Pigments listing or the Petroleum listing. In both cases, EPA used appropriate evidence to evaluate current conditions and to project plausible future scenarios. The Agency does not presume unlikely worst cases or hypothesize scenarios that are not likely in the interests of avoiding listing decisions that would not result in incremental benefits to public health or the environment. *See Dithiocarbamate Task Force* v. *EPA*, 98 F.3d 1394, 1401 (D.C. Cir. 1996).

With respect to the Dyes and Pigments proposal, management in unlined municipal landfills and on-site monofills was reported in the 3007 Survey for certain wastes. EPA found that nearly all dye and pigment waste sludges/solids studied had, in fact, been disposed in unlined municipal landfills. Thus, the Agency determined that placement in an unlined landfill was plausible for most dye and pigment wastestreams.

However, EPA did not consider disposal in landfills plausible for all Dyes and Pigment wastes, and considered the specific facts for each waste. For example, EPA proposed not to list one category of waste, wastewater treatment sludges from the production of triarlymethane pigments using aniline as a feedstock, despite risks that might arise if the waste were send to a landfill. For this waste category, EPA determined a landfill was *not* plausible management (see 59 FR 66096). This was because the current management practice was blending with fuel for combustion, and EPA decided that the high organic content and fuel value of the waste made it implausible that landfill disposal would occur. This is entirely consistent with EPA's approach in today's rule for a similar waste derived from use of acetonitrile as a solvent. As described in the specific section on acetonitrile (section IV.D3), EPA does not view risks that might arise from landfill disposal as significant because such disposal is unlikely given the current practice of fuel blending and the confirmed fuel value of the material.

The commenter is also incorrect in asserting that the approach used in today's rule is inconsistent with that used in the Petroleum Refining proposal. In that proposal the Agency evaluated landfill disposal for many of the wastes examined, because, in fact, this practice was reported to occur for those wastes. Contrary to what the commenter implied, EPA did not project landfill disposal in the Petroleum

Refining proposal as plausible for wastes that had no evidence of such disposal.

The commenter also stated that the Agency violated its own risk assessment criteria as presented in the listing determination for the proposed Dyes and Pigments wastes (see 59 FR 66076). The commenter pointed out that EPA states in the preamble that it is the Agency policy that a high-end hazard quotient above 1 represents a risk level for presumptive listing, and a high-end hazard quotient above 2 is a definite basis to list. The commenter argued that, if EPA applies this policy to the solvent listing determination, at a minimum both acetonitrile and 2-methoxyethanol have hazard quotients exceeding this criteria (HQ of 200 and 16, respectively), and should have been listed.

EPA disagrees that its decisions in today's listing are inconsistent with its listing policy. As the Agency explained in the proposed rule, EPA's risk assessment for acetonitrile indicated HQs below one at the bounding level for incineration and at the high-end for wastewater treatment tanks and for open storage tanks. EPA's risk assessment for 2-methoxyethanol indicated HQs below one in bounding analyses for wastewater treatment tanks and incineration and no risk for the storage tank scenario. The HQs cited by the commenter were reported as part of an intermediate stage of the analysis, as reported in the background document for the proposed rule, specifically, § 5.7 of the Assessment of Risks from the Management of Used Solvents. This intermediate stage was used to decide if further evaluation was necessary. Because possible risks of concern were found, EPA proceeded to a third phase of assessment. After consideration of the fact that nearly all of the wastes evaluated in the intermediate analyses were already hazardous, EPA's assessments for these scenarios indicated risks below levels of concern for the remaining nonhazardous waste streams (see Supplemental Risk Assessment). These multi-phase assessments are discussed further in response to specific comments on acetonitrile in section IV.D.3 of today's document.

4. Plausible Mismanagement Scenarios

Two commenters stated that EPA relied on incomplete data provided in the RCRA 3007 Questionnaires to identify actual management, and disregarded standard potential mismanagement scenarios based on an incorrect assumption that solvent waste management will not change over time. According to these two commenters, a valid solvent listing determination must also consider improper disposal in unlined landfills, impoundments, waste piles, land treatment units, and long term accumulation, which EPA overlooked. One of the commenters went on to state that the Agency's listing policy requires the presumption of land disposal in unlined landfills and surface impoundments, particularly in the case of solvents, where EPA's questionnaire data present a partial and misleading snapshot of solvent use due to limitations in the data collection methodology. This commenter also argued that due to the limitations of the data collection, EPA cannot claim that the specialized or limited uses of the solvents lead to a complete characterization of solvent users or solvent waste management practices. The commenter concluded that EPA's decision not to list these solvents is invalid and contrary to the criteria enumerated in 40 CFR 261.11.

The Agency disagrees with the two commenters. The data collected show that the management practices of most concern to the commenters (landfills and surface impoundments) are not widely used. Where land-based disposal was reported in the 3007 Survey, the Agency considered whether the waste is capable of posing a substantial present or potential hazard to human health or the environment. For landfills, EPA found that modeling was not necessary because solvent loadings were very low. The few cases of surface impoundment use were fully evaluated via modeling and were found to present no significant risk.

EPA relied on management practices reported in response to the 3007 Surveys, and EPA evaluated the potential risks associated with those management practices that are used or likely to be used. As the Agency has explained in prior responses, EPA could and did target the facilities and industries actually using these chemicals as solvents. As a result, the Agency identified the largest users of these chemicals as solvents. EPA has responded in detail to comments regarding the adequacy of the characterization of solvent waste generators earlier in today's document (see section IV.A.1).

The solvent wastes reported from the Survey fell into several classes: high concentration organic liquids or solids, treatment residuals (wastewater treatment sludge, incinerator ash), and wastewaters. The high content organic nonwastewaters were sent to thermal treatment in incinerators, boilers, or fuel blenders, and in some cases recovered via distillation for reuse. The vast majority of these wastes were managed as hazardous waste, because they exhibit a characteristic (primarily ignitability), or they are generated as a waste mixture with solvents that are already listed as hazardous.

From the data available, EPA evaluated the potential for risks to arise from disposal of solids in landfills and the treatment of wastewaters in surface impoundment. Wastes reported to go to landfills were typically treatment residuals that contained negligible amounts of solvents. For the 10 solvents examined (the remaining 4 on the original list of 14 had essentially no solvent use), no landfill disposal was reported for six of these solvents. In fact, of the total 435 solvent wastes reported for the 10 chemicals, only 5 were reported to go to nonhazardous waste landfills. In the proposed rule and the Listing Background Document, EPA discussed why the few cases of landfill disposal reported for specific solvents (acetonitrile waste, methyl chloride, cumene, and cyclohexanol) were not of concern. This was principally because the solvent loadings in these wastes were very low. In response to comments, EPA further considered one waste that was reported to be disposed in a hazardous landfill. However as discussed in the specific section in today's rule on acetonitrile, the waste is no longer going to any type of landfill due to its thermal value.

The Survey data show that wastes sent to landfills contained negligible amounts of solvent; landfilling of wastes with high solvent concentration was not reported. Thus, given these results, and the fact that nonwastewaters with high solvent content are generally hazardous and could not be placed in even a Subtitle C landfill without further treatment, EPA had no reasonable basis to conclude that disposal of spent solvent wastes in landfills poses a risk of concern.

Similarly, treatment of wastewaters in surface impoundments was rare for the solvent wastes examined (the vast majority were treated in tanks). Of all the wastes reported (435), only 10 were reported to undergo treatment in surface impoundments. The solvent loadings for six of these (from solvent use of acetonitrile and cumene) were low and clearly present no risk after dilution/treatment in a wastewater treatment system. The others were larger volume wastewaters that arose from the specialized use of three different solvents: methyl chloride, phenol, and furfural. With the reported solvent loadings available, EPA examined these special cases closely, and completed further modeling in response to

comments (see section IV.C.1 on surface impoundment modeling).

Concerning storage in waste piles and land treatment, EPA found no cases where such management practices were reported for any of the wastes examined. The lack of waste pile storage is not surprising given the nature of most wastes that are accumulated, i.e., organic liquids and aqueous wastewaters, which are stored in tanks. Further, many of these wastes are already hazardous, and are therefore kept in storage containers that meet stringent RCRA regulations. Other solids were either relatively low volume wastes, for which a pile is not needed, or wastewater treatment residuals, which have no appreciable solvent content, as noted above. The practice of land treatment is a special practice that is relatively rare, and as EPA has noted in the past (see Dyes and Pigments rule, 59 FR 66074), such practices would be considered plausible only when information indicates that the practice is in use, or likely to be used in the future.

The Agency determined that the actual management practices represent the plausible management practices for the specific solvent wastes that are the subject of today's rule, because the Agency found no reason to believe that the current management practices would change significantly. In the case of wastewaters, EPA has no reason to believe that a facility would convert from a tank-based system to a surface impoundment given the capital investment and liability issues associated with constructing and operating land-based treatment units. The ongoing operating costs of managing wastewaters in an already installed tank are quite small relative to the costs of constructing a surface impoundment, or the costs of other alternatives such as sending the wastewaters offsite. Clearly, a large majority of facilities perceive a benefit from managing the waters in tanks, rather than impoundments, and EPA finds no reasons to project that those facilities would change their practices. For nonwastewaters, EPA has no reason to believe that a facility would switch from the thermal treatment of high organic wastes to disposal in a nonhazardous landfill due to the BTU value and the liability issues associated with land-based disposal. In fact, the data collected from the Survey clearly show that the use of impoundments and landfills is rare, and such practices are not common for these wastes. Also, as noted previously, the vast majority of nonwastewaters are already classified as hazardous waste, and cannot be land disposed without meeting treatment standards.

EPA believes the Survey did, in fact, collect sufficient data from the significant solvent users, to allow a reasonable assessment of plausible mismanagement scenarios. However, even assuming the data do not reflect all management practices for whatever reason, the Agency still maintains that the data available support EPA's decisions on what constitutes plausible mismanagement. The data collected show that the management practices of most concern to the commenters (landfills and surface impoundments) are rarely used for these solvent wastes. Furthermore, when these practices are used they are used for only very dilute concentration (and low risk) solvent wastes, except for a few special cases that were specifically considered by the Agency. The existing data do not support the commenters' argument that other practices must be assumed to be generally plausible for all the wastes evaluated. Creating hypothetical waste management scenarios would have no apparent benefit, and may lead to regulating wastes which do not present risks.

C. Risk Assessment

This section deals with comments on the hazard and exposure assessments conducted for the rulemaking. In response to comments, the Agency revised the risk assessment for some management scenarios. These updated results are presented in the following sections, along with responses to the comments. Full details of the updated analyses are presented in the background document for the risk assessment (Assessment of Risks from the Management of Used Solvents: Supplemental Risk Assessment Background Document, hereafter known as Supplemental Risk Assessment) provided in the docket to this rule. A summary of risk assessment results for all solvents are shown in Table 3. Comments dealing with the volumes and concentrations of wastes used as inputs for the risk assessment are dealt with in sections IV.A and IV.B.

1. Surface Impoundments

EPA received a variety of comments relating to the assessment of risks from management of solvent wastewaters in surface impoundments. One comment focused on the routes of exposure that were assessed from the groundwater pathway from surface impoundments. The commenter indicated that EPA's consideration of direct ingestion alone was insufficient for assessing the risk from this pathway, and suggested that the Agency evaluate other routes of exposure from groundwater. EPA agrees that these additional routes of exposure should be evaluated, and conducted additional analysis as described below.

In addition, two commenters suggested that the risk assessment should have assumed a higher concentration level for the solvents in these management units. The Agency used the headworks concentration (at the beginning of the wastewater treatment process), which represents a dilution of the solvent with other wastewaters. The high-end data on concentrations were taken from the section 3007 survey of all facilities, as noted in section IV.B.2, above.

EPA does not agree that higher concentrations of solvents should be used, but rather believes that its approach described below is more appropriate. To respond to these comments, the Agency conducted further modeling of surface impoundments to reevaluate the risks from solvents managed in these units. The risk reevaluation is summarized below; see the Supplemental Risk Assessment document for a full description of the methodology and results.

In the risk assessment for the proposed rule, EPA reviewed the high-end waste streams going to surface impoundments. The process of iterative risk screening rests on assessing high-end values, based on the premise that low-end values represent lower risk. Since the high-end waste streams did not show significant risk, EPA did not review the impoundments further. For the current effort, EPA ensured that all relevant factors were accounted for by modeling *all* the surface impoundments receiving wastewaters with these solvents. EPA used a standard Agency model (CHEMDAT8) to assess the steady state concentration of solvent in these units; EPA used the precursor (CHEMDAT7) in modeling for the proposed rule. To the extent possible, EPA attempted to use actual influent concentrations into the impoundments; this information was only available for one of the impoundments (at the Exxon Baytown facility). For the other surface impoundments, EPA used the headworks concentrations again. EPA believes that these concentrations represent a conservative estimate of the concentration of solvent entering the impoundment, since they do not account for the significant pretreatment occurring (in all cases) after the headworks, before entering the impoundment. Because of this pretreatment, the actual solvent concentration of influent to the

impoundment will be much lower than the headworks concentrations that were assumed for the modeling.

Using CHEMDAT8, EPA then modeled the resulting steady state concentrations of the solvents in each impoundment, as well as estimated quantities and concentrations of solvents that would be emitted to the air. EPA assessed direct inhalation risks using these airborne emissions from the solvent.

Risks from the groundwater pathway were assessed for all impoundments where the groundwater was considered at risk. To assess the risks from the groundwater pathway, EPA assumed no attenuation from the impoundment to the leachate. EPA estimated groundwater concentrations at a high-end receptor, and from that groundwater pathway assessed risks of direct ingestion of the groundwater, as well as inhalation and dermal contact risks from use of the groundwater. This assessment used the same methodology employed by the Agency in a recent listing (Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Petroleum Refining Process Wastes; 63 FR 42109, August 6, 1998) to estimate non-ingestion risks from the groundwater pathway.

The results of the assessment for the impoundments are summarized in Table 2. All hazard quotients represent cumulative figures for all pathways and routes of exposure. The assessment of cumulative risk from these routes of exposure is very conservative, in that it assumes that receptor locations were at the maximum exposure point for direct inhalation of airborne solvents, as well as for exposure to solvents in groundwater. EPA also added HQs from different chemicals in the same unit, making the highly conservative assumption that all of the noncarcinogens threatened similar health endpoints (i.e., cause the same type of damage to the same organs). This latter assumption is not likely to be true, but there was no need to refine the risk analysis to ascertain what the different endpoints might actually be, because the summed HQs were less than one. Because those multiple conservative assumptions were used in the analysis, the true high-end risk estimates would actually be lower than the numbers listed under the ''High-End'' column.

TABLE 2.—RISK ASSESSMENT RESULTS FOR MANAGEMENT OF SOLVENTS IN SURFACE IMPOUNDMENTS [1]

Facility	Solvents in unit	Bounding HQ [2]	''High-end'' HQ [2]
Tennessee Eastman	Acetonitrile, Phenol	3.30e–02	N/A [3].
Exxon Baytown	Methyl Chloride [2]	[4.60e–06]	[3.50e–06].
Mobil Beaumont	Furfural, Phenol	1.20e+00	8.00e–01.
Lyondell	Cumene	4.10e–02	N/A.
Rhone-Poulenc	Acetonitrile	6.52e–02	N/A.
Citgo	Phenol, Furfural	7.40e–01	N/A.

[1] Risks presented represent the total risk from concurrent exposure to air and groundwater releases, and also the sum of risks from all solvents in the unit. The ''high-end'' risks are above a high-end due to these and other conservative assumptions.
[2] Risks for methyl chloride represent excess lifetime individual cancer risk .
[3] N/A indicates high-end analysis was not done because the bounding analysis showed no risk of concern.

2. Tank-Based Management of Wastes

In the process of responding to comments comparing EPA's evaluation of the solvent wastes in question with the results of a recent EPA study on potential air risks (see comment below related to the Air Characteristic Study), EPA reviewed the risk analyses conducted in the proposed rule for management of wastes in tanks. EPA discovered that an arithmetic error was made in the calculation of solvent emissions from tanks. This error resulted in an underestimation of emissions for all tank scenarios by a factor of 1,000.

EPA has therefore revised the risk estimates for tank-based management of wastes. The analytical approach was to update the analyses that were completed for the proposed rule, using corrected emissions, the latest version of the emissions model (CHEMDAT8), and current chemical and toxicological benchmark data available for some chemicals. The analysis also refined parameter values to more closely approach high-end analyses; nevertheless, because of multiple high-end assumptions, all of the revised analyses are still characterized as more conservative than true high-ends. In addition, EPA conducted a second analysis to verify these results. This second analysis used air dispersion data and receptor distances from EPA's Air Characteristic Study (May, 1998). Both analyses, using the corrected source term data, indicated that risks for all tank-based scenarios were below levels of significant concern (see section IV.C for further discussion of listing decisions). More details of the analyses are presented in the Supplemental Risk Assessment Background document. The results of these analyses are presented in Table 3.

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Table 3. Summary of Risk Assessment Results for All Solvents Examined

Solvent	Management Scenario	Exposure Route	HQ [1,2]		Verification Analysis (*Air Characteristic Study* methodology)
			Bounding	High-End	
Furfural	Surface impoundment	Inhalation	5.7E-01	1.1E-01	--
		Groundwater ingestion	3.3E-01	3.3E-01	--
		Groundwater non-ingestion	1.3E-01	1.3E-01	--
	Aerated WWT tank	Inhalation	--	9.0E-01	6.0E-01
	On-site accumul.	Inhalation	--	1.0E-05	5.0E-07
	Incineration	Inhalation	1.2E-14	--	--
2-Methoxy-ethanol acetate	On-site accumul.	Inhalation	--	9.0E-05	9.0E-05
	Incineration	Inhalation	7.3E-13	--	--
Cumene	Surface impoundment	Inhalation	3.1E-03	--	--
		Groundwater ingestion	1.3E-06	--	--
		Groundwater non-ingestion	1.4E-04	--	--
	Aerated WWT tank	Inhalation	--	2.4E-04	1.9E-04
	On-site accumul.	Inhalation	--	1.0E-02	6.0E-03
	Incineration	Inhalation	6.4E-09	--	--
Cyclohexanol	On-site accumul.	Inhalation	--	8.0E-01	9.0E-01
	Incineration	Inhalation	1.3E-08	--	--
2-Ethoxy-ethanol acetate	Aerated WWT tank	Inhalation	--	1.4E-04	6.1E-05
	On-site accumul.	Inhalation	--	2.0E-01	5.0E-01
	Incineration	Inhalation	2.2E-08	--	--
Isophorone	On-site accumul.	Inhalation	--	1.0E-02	2.0E-01
	Incineration	Inhalation	2.3E-08	--	--

Methyl chloride[2]	Surface impoundment	Inhalation	4.6E-06[2]	3.5E-06[2]	3.5E-06[2]
	Aerated WWT tank	Inhalation	--	[1.3E-06]	[4.8E-07]
	On-site accumul.	Inhalation	--	[4.0E-06]	[2.0E-06]
	Incineration	Inhalation	[3.3E-14]	--	--
2-Methoxyethanol	Aerated WWT tank	Inhalation	--	3.0E-02	1.3E-02
	On-site accumul.	Inhalation	N/A[3]	--	--
	Incineration	Inhalation	3.6E-08	--	--
Phenol	Surface impoundment	Inhalation	1.7E-01	--	--
		Groundwater ingestion	1.4E-03	--	--
		Groundwater non-ingestion	2.4E-02	--	--
	Aerated WWT tank	Inhalation	--	4.6E-03	1.9E-03
	On-site accumul.	Inhalation	--	4.0E-01	4.0E-02
	Incineration	Inhalation	7.4E-03	--	--
Acetonitrile	Surface impoundment	Inhalation	1.1E-02	--	--
		Groundwater ingestion	1.1E-02	--	--
		Groundwater non-ingestion	7.0E-02	--	--
	Aerated WWT tank	Inhalation	--	1.8E+0	7.3E-01
	On-site accumul.	Inhalation	--	4.0E-01	7.0E-01
	Incineration	Inhalation	6.1E-07	--	--

[1] The "high-end" risks are above true high-end values, because multiple high-end assumptions make the analyses more conservative than true high-ends. [2] Risk numbers for Methyl Chloride represent excess lifetime individual cancer risk [3] All wastestreams being accumulated are already regulated as hazardous wastes.

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3. Multiple Solvents

A commenter noted that EPA failed to consider the cumulative impacts of multiple solvents and other hazardous constituents released via the same exposure pathways in the risk assessment. In order to fully respond to this comment, EPA conducted an assessment of the cumulative risks posed by exposure to multiple solvents. Inasmuch as the listing determination is based on the solvent constituents of these wastes, other constituents of the wastestreams were not assessed. These risk assessment results, therefore, only apply to the solvents themselves. In this analysis (see the Supplemental Risk Assessment for details) EPA assessed all cumulative solvents risks where multiple solvents were managed in one unit or in different units at a facility.

This analysis used the same assumptions as EPA's prior assessments for the proposed rule. Wastestreams which were already classified and managed as hazardous were not assessed, since there is little likelihood of risk reduction through a listing determination. EPA focused its effort on currently unregulated wastes. The characterizations of waste management included the same conservative parameters as in the proposed rule, modified as described above, including the construction and operation of surface impoundments, meteorological conditions, and the proximity of hypothetical receptors. One particularly conservative assumption was storage of solvents in open-topped tanks permitting maximum volatilization. This assumption of extensive volatilization out of open-topped tanks is highly unlikely, because the wastes were being stored pending incineration or other thermal treatment. In addition to those factors, EPA included highly unrealistic assumptions in assessing cumulative risk from exposure to multiple solvents. Environmental receptors were considered to be located at maximum exposure points relative to all management units. EPA also added HQs from different chemicals, making the highly conservative assumption that all of the non-carcinogens threatened similar health endpoints (i.e., cause the same type of damage to the same organs). This latter assumption is not likely to be true, and overestimates risks, but there was no need to refine the risk analysis to ascertain what the different endpoints might actually be.

Despite these assumptions, which suggested unrealistic conditions to maximize the probability of showing risk to human health, none of the assessed scenarios showed combined hazard indices over one. In one facility (Exxon, Baytown), a surface impoundment showed an increased cancer risk of 4E–06 in the high-end analysis, however, this risk was entirely due to the single solvent methyl chloride, as shown in the preceding section. As discussed in section IV.D, EPA has concluded that this does not represent a significant risk, especially in light of existing air regulations that apply to this unit.

The scientific evidence represented by this risk analysis leads EPA to the clear conclusion that management of multiple solvents does not pose significant incremental risk to human health in any populations.

4. Comparison With HWIR Exit Levels

A commenter argued that EPA should reconsider the risks from acetonitrile, phenol, methyl chloride, and isophorone based on the risk analysis presented by EPA in the proposed Hazardous Waste Identification Rule (HWIR; 60 FR 66344, December 21, 1995). For each of these chemicals, the HWIR analysis produced an ''exit level'' concentration, suggesting that concentrations of waste higher than the exit level might pose unacceptable risks. The commenter notes that the § 3007 survey showed solvent wastes for each of these chemicals being generated at higher concentrations than the HWIR exit levels. The commenter noted that wastewaters of acetonitrile, phenol, methyl chloride, and isophorone are generated in concentrations higher than the HWIR exit levels for these chemicals.

The commenter's comparison between HWIR exit levels and the solvent waste concentrations does not indicate that the solvent risks are of concern. The purpose of the HWIR exit levels is not to assess risk from a particular set of chemicals or a specific set of wastes. Unlike listings, where the Agency makes a decision based on actual information about how specific wastes are generated and managed, the HWIR levels are intended as broad risk screens, covering a large number of possible waste streams and waste management methods. The listing decisions for the chemicals examined in today's rule are limited to consideration of potential risks that arise only from the wastes generated after the chemicals are used as solvents. Therefore, these decisions are limited to considerations of waste characteristics and waste management practices specific to these uses.

Because HWIR had a different purpose than this risk assessment, it used different methodologies. HWIR evaluated five management scenarios: aerated treatment tanks, quiescent surface impoundments, land application units, ash monofills, and wastepiles. Only two of these scenarios aerated treatment tanks and quiescent surface impoundments are similar to the management scenarios modeled for the used solvents risk assessment. Another obstacle to comparison is the waste volume modeled. HWIR modeled a range of waste volumes, bounded by the capacity of the waste management unit. From these volumes, HWIR calculated levels for specific chemicals on a nationwide basis, for any use in any industry, and made various assumptions for waste generations and management, as noted above. In contrast, the wastestream volumes (and constituent loadings) modeled for the solvents risk assessment were based on actual data from the industry survey.

The Agency has not issued the HWIR in final form and is continuing to refine the analysis; therefore, the HWIR exit levels are currently being reviewed and revised. However, even the revised numbers, as a screening tool, cannot be automatically used in assessing the validity of other regulatory actions by EPA. Together, the differences in management units and wastes modeled mean that a simple comparison of HWIR exit level concentrations to the concentrations in modeled solvent wastes is not meaningful.

5. Environmental Damage Incidents

Several commenters stated that the Agency screened out and ignored damage cases prior to 1980. EPA believes that the commenters have apparently misunderstood how the Agency evaluated the damage cases. The Agency did not screen out and ignore damage cases prior to 1980. All damage cases available were considered including those prior to 1980. However, most of the damage cases found for the 14 chemicals resulted from disposal well before 1980, before RCRA regulations were in place. Damage cases were reviewed to direct the analysis to industries and conditions that might show evidence of environmental damage from improper management of used solvents that might be occurring now or may occur in the future; the cases did not provide an exclusive or restrictive guide. EPA evaluated a variety of legal and financial factors that might affect plausible management, and technological factors affecting fate and transport of hazardous constituents.

These other factors are especially important when examining the solvent wastestreams, since almost 90% of the non-wastewaters are already required to

be managed as hazardous under Subtitle C. Although these constituents may have been found at Superfund sites, it is not reasonable to suggest that RCRA-regulated hazardous wastes could be managed today in the same way they were managed at industrial facilities in the past. The damage cases that were found reflect mismanagement in the past, not the Subtitle C management (or even the likely Subtitle D management) of these chemicals which is the norm today.

Furthermore, as described in the proposed rule, there were many other reasons why the damage cases were not useful (see 61 FR 42326). These reasons include: (1) EPA could not determine that any of the contaminants of concern were used as a solvent prior to disposal; (2) wastes at these sites were poorly defined, and the term ''solvent wastes'' likely referred to the more widely used solvents that are already listed; (3) many of the chemicals under study have other uses that are more likely to be the reason for contamination; and (4) EPA found no damage cases at sites within the industries that reported using the solvents under study.

6. Spills, Leaks, and Overflows

One commenter stated that EPA's risk assessment did not include an evaluation of human health and environmental risks posed by leaking tank systems. According to this commenter, EPA argues the concentration of solvents is ''very low'' in wastewaters, and thus assessing the risks posed by tank leaks is not warranted. However, the commenter argued the database identifies solvent wastewaters containing 9% 2-methoxyethanol, 8% phenol, 200 ppm 2–EEA, 169 ppm methyl chloride, and 5,000 ppm furfural. The commenter concluded, given that no time limit would be placed on storage if the wastes are not regulated as hazardous, defective leaking containers and tanks are highly possible.

EPA has examined the possibility of spills from management units such as tanks or surface impoundments. The Agency does not have the data or the means available to accurately assess the likelihood of such releases, the magnitude of releases, or other data that would be necessary to assess the risk of such spills. Based on the characteristics of these solvent waste streams, however, the Agency has concluded that to the extent that such releases would pose risks, a decision to list any of these wastes would not provide significant reduction in the potential hazards from such events. The Agency bases that conclusion on the following facts.

The vast majority (over 98%) of the volume of solvent wastes are wastewaters in wastewater treatment units. These wastewaters are diluted to very low concentrations of solvents, and are treated further to even lower levels. When necessary, EPA has modeled the effects of release of some of these solvents from impoundments and found no significant risk to human health or the environment (see section IV.C.1 for further discussion on potential risks from impoundments). For the specific wastewaters identified by the commenter, EPA notes that surface impoundment scenarios were modeled for phenol, methyl chloride, and furfural at the same or similar concentrations to those cited, and no significant risks were found. The wastewater mentioned that contains 2-methoxyethanol is managed as hazardous in an off-site biological treatment system, so that any releases or risks are unlikely. Similarly, the 2–EEA waste cited is scrubber water that is classified as hazardous, and furthermore corresponds to a total of only 0.58 kg of EEA. Therefore, EPA does not agree that these wastes are likely to present significant risk even under a spill scenario.

Of the nonwastewaters, almost 90% are already regulated under Subtitle C of RCRA. Spills from the RCRA units are already covered under contingency planning and corrective action requirements. Subpart CC includes additional requirements for spill protection during transfer of wastes (see 40 CFR 264.1084(j)). Therefore, EPA concludes that spills of these wastes from tanks, which would generally be episodic in any case and unlikely to produce long-term exposures comparable to those considered in listing determinations, are not of significant concern.

7. Non-Aqueous Phase Liquids (NAPLs)

In the proposed rule, even though EPA could not find scenarios that could lead to significant releases to ground water, the Agency also considered whether the spent solvent wastes had the potential to form non-aqueous phase liquids (NAPLs) that might move as a separate phase either above or below the ground water table. These NAPLs may present special problems, especially in assessing their transport and potential impact. However, EPA found that nearly all solvents under consideration are miscible or very soluble in water and are not likely to form NAPLs in groundwater. One commenter suggested that EPA re-examine the possibility of formation of NAPLs from these solvents.

To respond to this concern, EPA has conducted further analysis on the subject for this final rulemaking. Full details of this analysis are in the Supplemental Risk Assessment document for this rulemaking. Only four of the solvents are land disposed and pose a threat to the groundwater pathway: acetonitrile, phenol, furfural, and cumene. EPA assessed the possibility of formation of NAPLs from land disposal of these solvents.

The first three are all highly soluble, which indicates that NAPL formation is unlikely. EPA then assessed the likelihood of NAPL formation from cumene, using the methodology which has been developed for assessing NAPL probabilities at Superfund sites. Conservative estimations of the concentrations of cumene in groundwater still fell an order of magnitude below the threshold at which NAPL formation is a serious possibility. Therefore, EPA concludes that there is little likelihood of these solvents contributing to formation of NAPLs.

8. Risk Modeling Parameters

One commenter stated that the accumulation scenario modeled must assume long term storage, not a period of under 90 days. The commenter argued that extended on-site accumulation is a highly plausible mismanagement scenario, given that absent RCRA controls, a generator can accumulate such waste indefinitely. Thus, the commenter stated that EPA's risk model should not assume a finite storage time of 90 days, but should assume the more likely scenario of at least a two year period of storage.

This comment is based on an incorrect assumption. The accumulation scenario was not modeled for a period of 90 days as stated by the commenter. For each scenario, EPA used a storage duration designed to maximize the total risk. Modeling a longer storage time does not necessarily increase the risk, because it implies less frequent refilling of the tanks with new wastes. As described in the risk assessment documentation, this storage duration time was calculated by first generating a tank profile to yield the largest downwind concentration at the nearest residence based on data in Hazardous Waste Treatment, Storage, and Disposal Facilities (TSDF)—Background Information for Proposed RCRA Air Emission Standards (referenced in the proposal risk documentation as U.S. EPA, 1991c; p. 29, July 1996). (This high-end tank also happened to be the most common. Therefore, this model tank was used for all three types of estimates: bounding, high-end, and

central tendency.) The throughput and other parameters of this model tank were used in combination with solvent throughputs and high-end and central tendency concentrations to obtain solvent-specific emissions rates. The storage duration times were then back-calculated to fit this maximum release profile. For the bounding analysis, the modeling was so conservative that it resulted in greater than 95 percent release of the solvent in seven out of ten cases. Thus, a longer accumulation time, as suggested by the commenter, would have led to lower emissions, lower concentrations at the receptor, and thus a less conservative analysis.

9. Comparison With Results of Air Characteristic Study

EPA received a late comment suggesting that the risk analysis in the Air Characteristic Study recently released by the Agency (May, 1998) indicated that air pathway releases from these solvents were riskier than EPA's initial analysis had indicated. The commenter compared concentration levels of potential concern developed for some chemicals in the Air Characteristic Study to concentrations of the solvents reported in the listing determination. The commenter argued that the study showed significant inhalation risks for some of the solvents when managed in tanks at concentrations significantly lower than those found in the solvents data collection.

In response, EPA first notes that the purpose of the Air Characteristic Study was to evaluate the possible need for an air characteristic to address potential risks due to emissions from certain waste management units. The concentrations of concern estimated in the Study are screening values for the purpose of determining whether new regulatory controls are needed to fill potential gaps in existing regulations, and should be viewed in this context. The concentrations developed in the Study cannot be automatically used in assessing the validity of other regulatory actions by EPA, because the study uses waste data and certain modeling assumptions in its methodology that are different in a number of ways from the modeling assumptions and data used in other regulatory programs, such as listing determinations. In addition, the Study methodology is currently undergoing outside peer review. Therefore, the screening concentrations themselves could change pending the results of the review.

In any event, a comparison of the results reached in the Air Characteristic Study with the results of this risk assessment confirms that the concentrations present in these solvent wastes do not pose a significant inhalation risk. As noted above, EPA found an error in the risk analyses for tanks, and revised these analyses accordingly. This was the principal reason for the apparent difference in risk estimates between the risk assessment for the proposed analysis and the Air Characteristic Study (see section IV.C.2). However, even with these revisions, some apparent differences in concentration levels of concern would remain.

These differences in concentration, however, do not necessarily mean differences in risk. In this case, the source terms being compared are different. The Air Characteristic Study back-calculated to determine what loading of constituent could be safely managed in a given management scenario. For every management scenario, the loadings of constituent that the Air Characteristic Study concluded could be managed safely are *larger* than the loadings used in this risk assessment. The solvent constituent loading that the Air Characteristic Study determined could be safely managed in tanks ranged from twice the amount to millions of times the amount modeled for the solvents risk assessment. The analyses for today's listing determination used the solvent waste generation data (and subsequent loadings in management units) from the § 3007 Survey. The purpose of this listing is to determine the risks that may be posed by current and plausible future management of these specific chemicals when used as solvents, therefore, the EPA feels that the solvents waste generation data submitted from the 3007 survey is appropriate to use in the analysis.

To better understand the differences in risk assessment methodology used in the Air Characteristic Study, the Agency conducted a re-analysis of the risk from the solvent wastestreams using a modified methodology from the Air Characteristic Study, but still using the waste generation data and solvent loadings from the listing Survey. The methodology was virtually the same as that used in the Air Characteristic Study, except for some inputs that the study derived through Monte Carlo analysis. The results of this verification analysis showed no significant risk for any of the solvent management scenarios, and confirm the previous results. These results appear in Table 3. More details on these comparisons appears in the response to comments document accompanying this rulemaking.

D. Listing Determinations

EPA received comments on various aspects of the proposed listing determinations. Many comments on the determinations were raised repeatedly for various wastes, and are discussed in preceding sections, or in sections IV.D.1 and IV.D.2 below. Comments that are more specific for individual solvent wastes are addressed in the section IV.D.3. For complete responses to comments on these and other issues, see the Response to Comments Document in the docket to today's rule.

1. General Comments

Six commenters support EPA's decision not to list as hazardous waste the solvents at issue. However, one commenter disagreed with the decision not to list these compounds because they are similar in toxicity to the other solvents already listed as hazardous. The commenter stated that the solvents considered in this rule may be used by themselves, and their wastes, therefore, would not be mixed with the wastes from the other F-listed wastes, or the manufacturer can modify their processes to avoid using other F-listed solvents, so that their wastes would no longer be hazardous. The commenter went on to wonder if EPA's decision not to list these wastes was due to its ''anti-combustion'' strategy, because the wastes would ''then be readily excluded from combustion as a logical disposal option.''

EPA does not agree with the commenter's assertions regarding the decisions not to list. While some of the chemicals examined in today's rule may have toxicity similar to the solvents already listed as F-wastes, the toxicity of a chemical alone is not a sufficient basis for listing. EPA considers a variety of factors, including waste management practices and all the other factors listed in 40 CFR 261.11(a)(3). After evaluation of all factors, EPA determined that listing for these solvent wastes was not warranted. When appropriate, EPA also evaluated wastes that resulted from use of the solvent by itself and found no significant risks.

Further, EPA disagrees that in the absence of a listing decision a manufacturer would change its processes to segregate out the solvents considered in this rule. They had that incentive from the time the other solvents were listed in 1980 and 1986 and have either been mixing the wastes ever since or made decisions to make new mixtures with listed solvents. If a waste is hazardous under current regulations, due to mixture with other listed wastes or a characteristic, the

manufacturer already has ample incentive to modify its process to avoid the cost of generating more hazardous waste. These manufacturers apparently weighed the risks and benefits of mixing, or not mixing the wastes and still pursued their mixing practices. As the Agency has stated in today's document and in the Response to Comments Document, many of these decisions are driven by specific process parameters, cost effectiveness, chemical compatibility, and regulations of other Agencies. EPA has no reason to believe they will change these practices in the event of a final no-listing decision, considering that this decision does not change the status quo. Thus, EPA does not agree that a non-list decision would alter this behavior. Finally, EPA points out that many of the wastes examined in today's rule are, in fact, treated by combustion, typically in hazardous waste incinerators. Therefore, the wastes are not ''readily excluded'' from combustion as result of the no-list decisions.

2. Sufficient Regulation of Solvents

One commenter stated that EPA assigned appropriate weight to the fact that many solvents already are hazardous, a determination that is relevant to the Agency's assessment of plausible mismanagement scenarios, its determination in the risk assessment that no further risk reduction could be achieved through listing the solvents of concern as hazardous, and its determinations regarding the relevance and applicability of damage incidents identified. This commenter further stated that EPA gave due consideration to the benefits accorded by other regulatory programs. Another commenter, however, stated that the Agency should carefully consider the benefits associated with listing the solvent wastes that may exhibit a hazardous waste characteristic or are sometimes co-managed with presently listed solvent wastes. This commenter stated that there are important legal and policy reasons for listing the solvent wastes at issue in this rulemaking. The commenter noted that in the case of characteristic solvent wastes, listing the respective wastes obviates the need for testing to determine whether the waste is hazardous and could facilitate enforcement because inspectors need only compare the waste to the listing description to verify the applicability of hazardous waste requirements.

In response, the Agency notes that it did carefully consider the impact listing might have for solvent wastes that are already hazardous due to the characteristics, or mixture with hazardous waste. For the wastes under consideration in this rulemaking, EPA believes that the characteristics provide adequate regulatory control. EPA initially evaluated potential risks from all wastes and found risks of possible concern due to air releases from some wastes (for acetonitrile and 2-methoxyethanol; see proposed rule 61 FR 42327–42332). However, the wastes with the apparent risks were already regulated as hazardous. After considering the regulatory controls required, the residual risks were found to be below levels of concern. Based on assessments of risks posed by these wastes, in conjunction with the existing regulatory controls afforded by the existing characteristics and listings, the Agency determined that the solvent wastes as they are generated and managed do not pose a threat to human health or the environment. Therefore, the Agency has decided that listing is not warranted. While listing would obviate the need for testing (for those wastes not already listed or mixed with a listed waste), this is not a compelling reason by itself to list. A listing may assist enforcement to some extent; however, EPA has no indication that there is any problem in the implementation of the characteristic regulations for these wastes. On the contrary, the data collected indicate that generators are, in fact, managing the wastes of concern as hazardous when they are subject to such regulations.

The commenter states that EPA never addresses the actual or potential reclamation of characteristic solvent sludges and byproducts (See 40 CFR 261.2, Table 1). The commenter also argued that the regulatory status of residuals from the recovery of spent solvent wastes are different for listed wastes; if listed, the residuals are hazardous, but if not listed the residuals would be unregulated, unless they exhibit a hazardous characteristic.

The Agency disagrees with the statement that EPA did not consider reclamation. The Agency examined all residuals generated, including those generated from on-site recycling operations. Through the Survey, the Agency collected data on actual or potential solvent recycling and reclamation possibilities. Among the residuals evaluated are heavy ends, filtrates/decantates/distillates, organic/aqueous treated residuals, and filter related media; these were, in part, generated from the recovery of spent solvents or the treatment on-site of spent solvent residuals. Some facilities have the means and the financial incentive to perform reclamation of used solvents (often in-process). Other facilities are prevented from performing any sort of reclamation due to process purity requirements and product quality needs (e.g., pharmaceutical drugs, semiconductors), which may include regulatory requirements (e.g., purity requirements for drugs under the Food, Drug and Cosmetic Act). Aside from value to fuel blenders and incinerators, very little market seems to exist for many spent solvents or their sludges. While it is true that the regulatory status of recovery residuals is different for listed, as opposed to characteristic hazardous waste, EPA does not believe that this would, by itself, provide a strong reason for listing, unless risks can be demonstrated for such wastes. EPA has no data on the characteristics of such off-site residuals, and in fact has no indication that many of the spent solvents at issue are sent for off-site reclamation, beyond thermal treatment. Furthermore, in making a listing determination, EPA's primary focus is the wastes generated on-site, and not treatment residuals that may be generated off-site. To fully consider these derivative wastes would expand the scope of a listing into a much larger effort. EPA has chosen to examine wastes for which it can reasonably expect to collect sufficient data to support a listing evaluation.

The commenter goes on to state that in the HWIR rulemaking, EPA has not set exit levels for most of the solvents covered by the instant rulemaking. Therefore, wastes may meet the HWIR exit levels but still contain substantial concentrations of non-listed solvents. The commenter stated that by listing as hazardous the solvents in this rulemaking, EPA would then develop exit levels for the solvents, thus ensuring the concentrations of these solvents in waste mixtures are reduced to protective levels prior to leaving the Subtitle C regulatory system.

The commenter is premature in assuming the content or effect of the HWIR rulemaking, and an assessment of the effect of that potential rule on residuals addressed in today's final rule is speculative. The Agency points out, however, that the concentrated waste mixtures reported for the solvents at issue are unlikely to be realistic candidates for exemption under HWIR. Due to the high levels of other constituents, these wastes most certainly have to be treated, such that the wastes that might ultimately exit the RCRA system would be treatment residuals. Concentrated organic wastes are invariably treated through incineration or other thermal treatment, and such treatment would likely destroy the solvents in question, as well as the

other hazardous constituents. Furthermore, wastes that are characteristic must be treated for underlying constituents under the Land disposal restrictions (LDR) regulations. Thus, residuals that are exempted under HWIR are not likely to have solvent levels of any concern.

The commenter also stated that by listing the wastes as hazardous, EPA can encourage pollution prevention activities associated with solvent uses and waste management, including but not limited to solvent substitution, process changes and less reliance on combustion. The commenter noted that, through the listing process, EPA could ensure that the wastes will always be managed as hazardous, recognizing that attempts to identify solvent uses and users in the proposal are at best, substantially incomplete and subject to change. The commenter stated that it is entirely plausible that pollution prevention programs emphasizing hazardous waste generation reductions, the increasing cost of disposal associated with the upcoming hazardous waste combustion rules, and other factors will encourage hazardous solvent waste generators to reduce or eliminate the use of listed hazardous waste solvents. Under these circumstances, current codisposal practices are not indicative of future mismanagement scenarios.

The Agency believes that the existing regulatory requirements for these wastes, many of which are hazardous already, provide ample incentives for pollution prevention, both because of liability concerns and disposal costs associated with hazardous wastes. In addition, as noted above, under the LDR regulations, characteristically hazardous wastes must be treated for underlying hazardous constituents. The Agency has reason to believe that industry voluntarily assesses opportunities for pollution prevention. As stated in the Listing Background Document (page 17), all but four of these chemicals are reportable in TRI Form R. Part of that reporting package includes pollution prevention and waste minimization. As an example, use of the three glycol ether chemicals under consideration in this rulemaking (2-methoxyethanol, 2-methoxyethanol acetate, and 2-ethoxyethanol acetate) has diminished significantly, and production of 2-methoxyethanol acetate has been eliminated. Further, the cost of these chemicals is high in comparison with other comparable chemicals. These chemicals are used in industry only when their application is considered so suitable as to overcome any price disadvantages. As a result, for the solvents under consideration in this rulemaking, both regulatory requirements (e.g., characteristics, TRI) and economic factors play a role in encouraging companies to undertake pollution prevention assessments and institute changes where possible. Thus, EPA finds no reasonable basis to project changes in management practices reported in the 3007 Survey, as suggested by the commenter.

The Agency has no reason to suspect that current management practices would be likely to change in the future to a practice that would pose a substantial risk to human health or the environment (e.g., from thermal treatment to land disposal or from a tank-based system to a surface impoundment) due to the regulatory prohibitions, heating value of the waste and/or requirements of the facility's wastewater treatment systems.

The commenter also stated that EPA's assumption that analogous waste streams generated by all industry sectors using any of the solvents always generate an ignitable hazardous waste (based on the fact that some of the wastes reported to the Agency in the questionnaires are ignitable hazardous wastes), and will continue to do so, is not sustainable given the limitations associated with the preliminary and final questionnaires.

EPA disagrees. Nowhere does the Agency assume that analogous wastestreams generated by all industry sectors using a particular solvent always generate an ignitable waste. The Agency has determined, based on reported management practices, that additional management practices for high solvent concentration/high organic containing wastes other than those considered in the risk assessment are not likely to exist. While some solvents may exist in mixtures at levels that do not exhibit the ignitability characteristic, EPA assessed risks from such mixtures as reported in the 3007 Survey. In fact, the initial risk analyses for all solvents did assess the risks from the wastes reported to be hazardous. Except for the cases of acetonitrile and 2-methoxyethanol, EPA did not pursue the impact of the hazardous waste designations, because the risk results for the other solvents were below levels of concern. In the next phase of risk analyses for acetonitrile and 2-methoxyethanol, the Agency did not find significant risks from any remaining nonhazardous wastes. (See Supplemental Risk Assessment document for more details.)

The Agency found that process and other limitations are a technical and regulatory bar to using the 14 chemicals alone or in combination with non-listed solvent wastes. For example, FDA regulations preclude solvent substitution in the pharmaceutical industry. Similarly, chemical purity concerns and final product quality requirements often specify the chemicals to be used.

Another commenter stated that EPA had wrongly assumed that the 10 solvent wastes are already captured as hazardous by the characteristics. The commenter states that four of the ten solvents of concern have flash points that do not meet the characteristic of ignitability: phenol, isophorone, furfural and cyclohexanol. Wastes from these four chemicals could never exhibit the characteristic of ignitability, unless generated in mixtures with some other component that has a low enough flash point. Two commenters provided calculations, using Raoult's Law and the lower flammability limit, of the potential concentration of solvents in a mixture that would result in an ignitable waste. These commenters contend that the solvent concentration in the mixtures must be very high to produce a mixture that is ignitable.

As noted above, EPA did not need to rely on the fact that all waste mixtures would be ignitable. Certainly for the four solvents mentioned by the commenter, EPA did not rely only on the hazardous waste designations, but rather presented risk results for all wastes reported. In addition, the amount of solvent in nonwastewaters for two of the chemicals cited were extremely small (cyclohexanol-16 kg; furfural-<1 kg). Thus it is highly unlikely that these wastes could present any significant risk, regardless of whether or not the wastes were designated as hazardous.

Furthermore, the commenters' calculations are based on the lowest solvent concentration waste being mixed with an organic chemical and the highest solvent concentration waste being mixed with water. However, most of the lower concentration solvent wastes reported are mixed with water (at concentrations of solvent much lower than those presented by the commenter), are managed in a tank-based wastewater treatment system, and undergo biological treatment. Most of the higher concentration solvent wastes reported are mixed with other organics and are managed by some type of thermal treatment due to the heating value of the waste.

3. Waste-Specific Rationales and Response to Specific Comments

Acetonitrile. Decision. EPA is not listing wastes from the solvent use of acetonitrile as hazardous waste under 40 CFR 261.31. As described in the

proposed rule and as modified by subsequent analysis in response to comments, EPA finds no significant risks from treatment in aerated tanks or combustion in a boiler. EPA concludes that potential risks from air releases of acetonitrile stored in open accumulation tanks (i.e., on-site storage tanks) are also not significant, because the vast majority of the nonwastewater residuals stored are already regulated as hazardous waste. In the latter case regulatory controls afforded by the existing solvent listings and the characteristics (primarily ignitability) are protective of human health and the environment.

EPA's final determination not to list this solvent is also based on the analysis in the proposed rule (see 61 FR 42328), as modified by subsequent analysis in response to comment, that potential risks from land-based management of acetonitrile wastes are not significant. All wastewaters found in EPA's 3007 Survey were treated in tanks, except for several wastes that were reported to enter impoundments as part of a wastewater treatment train in volumes that would not present significant risk. In response to comments, EPA conducted further analysis of the potential risks that might arise from treatment of acetonitrile wastewaters in a surface impoundment. This analysis included consideration of any additional risk resulting from noningestion exposure from groundwater (e.g., inhalation). As described in section IV.C, these analyses further confirmed this management practice presents no significant risks (see Table 3).

The proposal also found that the few wastes reported to go to landfills typically contained negligible levels of acetonitrile solvents, and were not of concern. In response to comments, EPA further examined the potential for risks that might arise if more concentrated wastes were placed in an unlined Subtitle D landfill, but continues to believe such risks are not of concern (see specific comments below).

As described in section IV.B, EPA updated its risk analysis for acetonitrile for some management scenarios. While the updated analyses confirmed the evaluation in the proposed rule, the updated analysis for aerated wastewater treatment tanks showed an HQ of two, which is slightly above the Agency's presumptive no-list HQ level of one. EPA does not believe this marginal risk is significant for the following reasons. First and foremost, as noted earlier in section IV.B, the analysis that resulted in the HQ of two is actually more conservative than a true double-high end analysis. The dispersion modeling used in calculating the HQ of two incorporates a high-end receptor distance, in addition to two other high-end parameters used (solvent loading and tank scenario). Furthermore, the solvent loading used for this analysis was the maximum reported for acetonitrile in wastewaters, rather than the 90th percentile value that EPA typically uses to estimate high-end risks (see for example the risk analyses in the recent Petroleum Listing, 63 FR at 42117). In the 3007 Survey for solvent use, facilities reported the treatment of 26 acetonitrile wastewaters in tanks (see the Listing Background Document, App. I), and the maximum was above the 90th% value for the mass loadings from this distribution. EPA used the second highest loading, which was an order of magnitude below the maximum, to see the impact of using this value in the updated analysis. When using the 2nd highest loading, EPA calculated an HQ of 0.02, or well below one. Thus, the HQ of two is an overestimate and does not reflect a significant risk. As further confirmation, EPA also estimated risks for acetonitrile wastes using the methodology from the Air Characteristic Study. This methodology allowed receptor distance to be varied and was thus closer to a true high-end analysis. Using either the maximum acetonitrile loading or the second highest loading, the estimated HQ's were below 1.0 (0.7 and 0.08 respectively). Finally, EPA has recently promulgated regulations under the Clean Air Act (CAA) to control air releases from the industry represented by the one facility with the maximum loading (September 11, 1998, 63 FR 50280). These standards control releases of hazardous air pollutants, such as acetonitrile, from wastewater treatment systems at pharmaceutical producers. Therefore, for these reasons the Agency does not believe that the risks from acetonitrile in wastewater treatment tanks are likely to be significant.

Given that nearly all of the nonwastewater acetonitrile residuals are either already being handled as hazardous, and those that are not handled that way contain negligible amounts of the solvent, these spent solvent residuals are not likely to pose a significant hazard to human health or the environment. Furthermore, treatment of wastewaters in tanks, or in rare cases in impoundments, presents no significant risks. Therefore, the Agency continues to believe that a no-list decision is warranted.

Specific comments. Several commenters support EPA's no list decision on Acetonitrile. The commenters confirmed that the management practices and characterization of wastewater and nonwastewater residuals from the use of acetonitrile as a solvent have been properly identified. One commenter also noted that the risk assessment conducted by the Agency supports the determination not to list acetonitrile spent solvents. However, another commenter disagreed with the Agency's findings, stating that, despite shortcomings in EPA's risk assessment, the high-end analysis for tank storage resulted in an estimated HQ of 200, orders of magnitude higher than the HQ of 1 typically warranting a hazardous waste listing. This commenter noted that only by performing the Phase III assessment was the Agency able to rationalize a no-list decision.

In response, EPA wishes to clarify the meaning of the different phases of the risk assessment. The iterative process of risk assessment began with bounding analyses as the first phase. This type of analysis (by definition) involves conditions so unlikely as to be virtually impossible. Many scenarios did not show significant risk. Those scenarios which showed significant risk under bounding conditions were assessed under ''high-end'' conditions in Phase II. This was a more realistic assessment, but still reflected close to a ''worst-case'' set of conditions.

Of all scenarios evaluated for acetonitrile, only one showed significant risk when modeled under high-end conditions, an uncovered storage tank (also called on-site accumulation in the proposal). The commenter refers to the hazard quotient of 200 calculated for this scenario. However, this result was reported as an intermediate step in the risk assessment process. EPA had significant concerns about this result for two basic reasons. First, this scenario involved storage of solvent wastes pending incineration. Modeling limitations required the Agency to estimate risks based on solvent storage in tanks without covers of any kind. In fact, the scenario assumed that essentially all of the stored acetonitrile would volatilize from the tanks before incineration could take place. The Agency judged this scenario highly unlikely because the waste is being stored for thermal treatment, and it is irrational to assume valuable fuels would be allowed to escape in such a manner. Further, as explained in the proposed rule, the vast majority of the wastes are already classified as hazardous waste because they are either characteristically hazardous, or co-managed with listed hazardous wastes. As such, the storage units would have to comply with RCRA regulations

promulgated to control such air releases (see 40 CFR part 264, subpart CC). Thus, the HQ of 200 is clearly an overestimate, because it was based on modeling releases for wastes that are already hazardous.

In order to assess potential risks from the nonhazardous wastes that were not already subject to Subtitle C controls, the Agency refocused the assessment on the nonregulated waste streams in this scenario (acetonitrile in storage tanks). This third phase of the risk assessment, is a normal and logical step in the iterative risk assessment process. Phase III of the assessment showed that a bounding analysis of these wastes resulted in an HQ below one. Therefore, EPA concluded that the risks from the nonhazardous portion of the acetonitrile wastes are not significant, and that listing of solvent wastes from the use of acetonitrile is not warranted.

One commenter states that large quantities of acetonitrile wastes are generated in concentrations well in excess of levels capable of posing a substantial risk to human health or the environment, and are managed in ways inconsistent with the Congressional directive to minimize the toxicity of mobility of wastes destined for land disposal. The commenter stated that large quantities of solids containing 10,000 ppm solvent are disposed in hazardous waste landfills, while the Universal Treatment Standard (UTS) applicable to acetonitrile is 1.8 ppm.

EPA disagrees that large quantities are generated that present substantial risks. The Agency evaluated risks based on potential exposures arising from plausible management. The highest concentration of acetonitrile going into a surface impoundment is no higher than 0.04 mg/L (see Listing Background Document, Table 3–2). In fact, it would likely be much lower, since those wastewaters are pretreated before entering the impoundment. As described in section IV.C.1, further modeling done for surface impoundments confirmed that risks from such levels were not significant.

The commenter is incorrect in stating that large quantities of solids containing 10,000 ppm acetonitrile are disposed in hazardous waste landfills. First, as noted previously, very few acetonitrile wastes were sent to landfills, i.e., four out of the 254 wastes reported in the Survey. The commenter singled out the one waste with appreciable acetonitrile loading (454 kg/yr.). In EPA's view, this one waste is not reflective of ''large quantities'' going to landfills. Furthermore, as described further in the following response, the practice is no longer occurring, and the facility in question is currently sending this waste stream for fuel blending, in recognition of its fuel value.

The Agency disagrees with the commenter's conclusion that current management practices are inconsistent with the Congressional directive to minimize the toxicity and mobility of wastes destined for land disposal. The vast majority of the acetonitrile waste (nonwastewater), both by volume (99%) and by acetonitrile loading (99%), is not managed in land-based units. Furthermore, as noted above, the vast majority of acetonitrile wastes are already hazardous, and as such, must meet the Land Disposal Treatment standards prior to land disposal.

Finally, as described earlier in today's document, some commenters argued that EPA should examine more land disposal scenarios, such as landfills. In response, the Agency examined groundwater ingestion risks from the disposal of acetonitrile solids in an unlined landfill. The Agency still believes that landfill disposal of acetonitrile is not a plausible management scenario, and there is no evidence that such waste has ever been disposed in Subtitle D landfills. To the contrary, the only facility that had been sending a significant acetonitrile loading to a landfill (454 kg/yr) sent the waste to a Subtitle C landfill. Furthermore the facility indicated that it had ceased this practice during 1993 and started sending the waste for thermal treatment because of the waste's fuel value. (EPA has received confirmation from the generator of this waste that the material has fuel value on the order of 14,800 BTU per pound.[1]) Thus, EPA believes that such wastes will be sent for thermal treatment under the current regulatory structure. The Agency decided, however, to examine the resulting risks if such disposal were to occur in an unlined Subtitle D landfill. As described in more detail in the Supplemental Risk Assessment, the resulting analysis suggested hazard quotients in the range of 11–22 for a high-end scenario.

EPA does not view these risks as significant, however, for several reasons. First, as noted above, landfill disposal is unlikely given the fuel value of the material, thus EPA does not view disposal in a D landfill plausible. In any event, the elevated HQs were projected for only one waste out of the 254 acetonitrile wastes identified in the 3007 Survey. Even if EPA found that the elevated HQs reflected a plausible management scenario, the Agency might well decide that the potential risk posed by this one waste does not merit listing of all acetonitrile residuals generated. Given the widely varying nature of the industries and wastes involved, and the very small percentage of management activities that even arguably could present a risk of concern, the Agency believes that a broad listing for solvent use would result in over regulation. In any case, EPA concludes that wastes such as these are not likely to be disposed in landfills, and are therefore unlikely to pose significant risks.

Phenol. Decision. EPA is not listing wastes from the solvent use of phenol as hazardous waste under 40 CFR 261.31. As described in the proposed rule and as modified by subsequent analysis in response to comments, EPA finds no significant risks from treatment in aerated tanks, storage in tanks, or combustion in a boiler. Furthermore, EPA does not believe that potential risks from land-based management of phenol wastes are significant. None of the wastes containing phenol were reported to go to landfills. Wastes with high organic content that contain any appreciable levels of phenol were classified as hazardous waste, and were sent for fuel blending or incineration as hazardous. Wastewaters were generated from the specialized use of phenol as a solvent in the extraction of materials from crude oil, and the resulting spent phenol wastes were sent to wastewater treatment systems for treatment in tanks or surface impoundments. EPA found risks from impoundments would be low given the dilution and treatment that occurs in these wastewater treatment systems, and the specific facts associated with the impoundment of potential concern (see 61 FR 42337).

In response to comments, EPA conducted further analyses of the potential risks that might arise from treatment of phenol wastewaters in a surface impoundment. In these analyses EPA also included consideration of any additional risk resulting from noningestion exposure from groundwater (e.g., inhalation), as well as codisposal with other solvent wastes under evaluation. As described in section IV.C, these analyses further confirmed this management practice presents no significant risks. EPA used the updated toxicological benchmark discussed in section III of today's rule for all additional analyses. The Agency also used the updated toxicological benchmark to revise the risk assessment results for other practices, i.e., storage and treatment in tanks, and found this

[1] See contact report dated June 10, 1998 documenting a telephone conversation with Dave Giffen, B.F. Goodrich, which is located in the docket accompanying today's rule.

had no significant impact on the risks (see Table 3).

Based the results of the risk analyses in the proposal, as well as the updated evaluations, these spent solvent residuals are not likely to pose a significant hazard to human health or the environment. Therefore, the Agency continues to believe that a no-list decision is warranted.

Specific comments. One commenter supported EPA's decision not to list wastes from solvent uses of phenol as hazardous wastes. The commenter agrees with EPA that phenol does not satisfy the criteria for listing in 40 CFR 261.11(a)(3). However, another commenter stated that there are cases where phenol is currently used by itself (without being mixed with other F-listed wastes) as an industrial solvent and with this decision ''not to list'' phenol as a hazardous waste, EPA would seem to provide disposal option ''carte blanche'' for current users. Manufacturers can modify their processes to use these solvents, which would no longer be considered hazardous wastes, according to this commenter.

In response, the Agency believes it unlikely that facilities would change their management practices based on the information collected in the Survey. The Survey indicated that all nonwastewater residuals containing phenol were managed as hazardous except one, which is managed by incineration. Thus, the solvent users managed their wastes as hazardous under the existing regulatory framework. There is no evidence that any facility that has not modified their process to use these solvents to date will do so after a no-list decision. Except for the facilities that use phenol for extracting lube oil, most facilities that use phenol as a solvent use it in laboratories or other specialty uses, and the waste solvents are sent for offsite treatment via incineration as hazardous waste. EPA has no indication that such generators could easily modify their use and accumulation practices in an attempt to generate nonhazardous material, nor is there any indication that facilities would do so.

A third commenter stated that EPA's decisions regarding plausible mismanagement scenarios are especially suspect in the case of phenol, because phenol is the 33rd highest volume chemical produced in the United States, is already widely used, and its use is projected to increase. The commenter stated that EPA did not adequately evaluate groundwater risks posed by phenol.

EPA disagrees with the commenter's inference that projected production increases in phenol are destined for solvent use. In fact, more than 96% of the phenol consumed in the U.S. is for nonsolvent uses (see SRI Chemical Economics Handbook, 1996). Increasing demand for products produced from phenol is due to increases for production of caprolactam, aniline, and bisphenol-A, (e.g., see http://www.chemicalweek.com/marketplace/prod__focus.html). Nearly all of the solvent use of this chemical (>99.9%) was attributed to the petroleum industry, of which the Agency conducted a complete survey. Given that the major uses of this solvent were very specialized (i.e., extraction of lube oil), the Agency is confident that no other significant uses are likely to exist. Contrary to the comment, damage from groundwater contamination was evaluated for the proposed rule, and a refined assessment was conducted for the final rule, and noted in section IV.B. These analyses did not find significant groundwater risks (see Table 2), and details are given in the Supplemental Risk Assessment document in the docket.

The commenter also noted that EPA's Hazardous Waste Characteristic Scoping Study (November 1996) showed that phenol releases originated from nonhazardous waste management units, principally landfills and surface impoundments. The Scoping Study, which expressly excluded product spills and accident releases, presents clear evidence of the potential risks posed by the improper management of phenol wastes, and the use of nonhazardous surface impoundments and landfills as plausible mismanagement scenarios for phenol and other solvent wastes. The commenter went on to state that EPA assumed tanks never leak, and landfills would never be used, because none were reported by the 31 facilities receiving the final questionnaire.

The Agency disagrees that this aspect of the Characteristic Scoping Study is relevant to the Solvents Listing Determination. As EPA noted in the proposed rule, damage cases reviewed did not show evidence linking the phenol contamination at damage sites, including nonhazardous landfills and surface impoundments, to phenol use as a solvent. Without evidence that the mismanagement of phenol wastes resulting in contamination is linked to solvent use, the damage incidents are not an adequate basis for listing phenol as a spent solvent. As noted above, the vast majority of phenol is used for nonsolvent uses. Therefore simply pointing to damage case analyses is not compelling evidence for listing phenol wastes that result only from its use as a solvent. If EPA were to determine that certain industries that use phenol for nonsolvent uses are mismanaging wastes and causing significant environmental problems, then the Agency would consider other regulatory approaches. However, EPA's examination of the limited solvent use of this chemical indicates that such uses are not likely to generate wastes of concern. Thus, a listing of spent solvent wastes for this chemical would not be a practical way to address the types of environmental concerns raised by the commenter.

EPA responded to the general issues of tanks and landfill disposal elsewhere in today's document. In the case of phenol, the Agency did not consider the disposal of phenol-containing wastestreams in a landfill to be a plausible management scenario for several reasons. None of the 38 wastestreams containing spent phenol reported in the 3007 Survey are managed in a landfill. One reason for this is that very few phenol wastes are solids (most are organic or aqueous liquids). Only one solid wastestream, spent carbon, contained significant levels of phenol. This was sent offsite for regeneration or incineration. EPA has no reason to conclude that the practice of landfilling will increase. Wastes with higher organic content are thermally treated, and 92% of the thermal treatment was conducted in hazardous waste units or through fuel blending for future burning. Therefore, EPA has no basis to project that wastes with significant phenol concentration are likely to be placed in a landfill.

Methyl Chloride. Decision. EPA is not listing wastes from the solvent use of methyl chloride as hazardous waste under 40 CFR 261.31. As described in the proposed rule and as modified by subsequent analysis in response to comments, EPA finds treatment in aerated tanks and surface impoundments, storage in tanks, or combustion in a boiler do not present significant risk. The vast majority of methyl chloride produced is used as an intermediate in chemical manufacturing, and very few uses as a solvent were identified. Essentially all of the wastes reported from the solvent uses of methyl chloride were limited to two facilities that produce butyl rubber. While some of the updated lifetime individual excess cancer risks in Table 3 for storage in tanks and wastewater treatment in tanks/surface impoundments were above 1E–06, the risks are below the 1E–05 level typically used by the Agency for identifying

candidate wastes for listing. Furthermore, as described below, the consideration of other factors indicate these risks are not significant.

The high-end risks for storage tanks (4E–06 from the updated analysis and 2E–06 from the Air Characteristic approach) are highly likely to be overestimates, because the analyses assumed that all of the methyl chloride in the stored solvent waste would be released. This assumption is unlikely for materials being stored expressly to send for thermal treatment. Furthermore, these wastes were reported to be already regulated as hazardous, and would be subject to RCRA regulations limiting air releases under 40 CFR part 264, subpart CC.

The risks found for wastewater treatment tanks (1E–06 from the updated analysis, and 1E–07 from the Air Characteristic approach) are at or below EPA's presumptive no-list level of 1E–06, and do not appear of concern. In addition, these are likely to be overestimates, because the concentration modeled for this scenario was 10 ppm, even though the value was actually reported as less than 10 ppm. EPA's updated assessment of the one wastewater reported to be treated in a surface impoundment showed a high-end risk of 4E–06. However the one impoundment that managed this waste is already a permitted Subtitle C hazardous waste unit, and is therefore subject to regulations limiting air releases (see 40 CFR part 264, subpart CC) and groundwater release (40 CFR part 264, subparts F and K,).

In addition, potential air releases from this industry are being addressed by other regulations promulgated under the Clean Air Act (see 61 FR 46906, September 5, 1996). These regulations control releases of hazardous air pollutants from process units, storage tanks and wastewater treatment systems. EPA believes that these air regulations provide a more integrated approach to controlling air risks than would be possible under the limited controls available for air releases under the RCRA listing program.

Based on the analysis in the proposal, the updated evaluations, and the other factors discussed in this document and the proposal, the methyl chloride solvent wastes are not likely to pose a significant hazard to human health or the environment. Therefore, the Agency continues to believe that a no-list decision is warranted.

Specific Comments. One commenter supported the Agency's decision not to list methyl chloride. However, another commenter stated that the Agency left potential risks posed by the groundwater exposure pathway unevaluated by assuming methyl chloride was managed only in a permitted surface impoundment, that tanks never leak, and that landfills would never be used.

As discussed more detail in the proposed rule (see 61 FR at 42334–42335), the Agency did evaluate the groundwater exposure pathway through management scenarios where groundwater exposure was plausible. Wastes with high organic content were regulated as hazardous and incinerated. Waste solids were rarely sent to landfills, and in these cases the concentrations of methyl chloride were negligible. The only wastes sent to landfills were a small volume of spent desiccant that contained <5 kg of methyl chloride, and a larger volume sludge/ash from a sludge treatment unit which was reported to have a ''trace'' amount of methyl chloride. Given that this chemical is readily treated by biodegradation and volatilization in an aerated biological treatment system, it is unlikely that any significant levels of methyl chloride remain in this residual. EPA believes that these very low concentration wastes reflect the types of waste solids that are likely to be sent to landfills. EPA also notes that other nonwastewaters containing any reported levels of methyl chloride (a total loading of 1.6 kg) were regulated as hazardous waste, making disposal in an unlined Subtitle D landfill illegal. Thus, significant groundwater risks from landfills are unlikely to occur.

The very limited solvent use of this chemical, and its unique characteristics (a gas at room temperature) lead EPA to conclude that it is unlikely that other solvent wastes would be generated that are managed in other surface impoundments beyond the example documented in the 3007 survey. As noted above, this impoundment is a hazardous waste unit, and is therefore subject to RCRA regulations limiting groundwater releases. Furthermore, as noted in the proposed rule, methyl chloride is readily treated by biodegradation and volatilization in waste water treatment systems, and thus is unlikely to migrate to the groundwater. Also, the tendency of methyl chloride to hydrolyze in water to methanol suggests that transport to receptors by groundwater is not likely to be significant.

One commenter argued that EPA failed to adequately consider the formation of products of incomplete combustion (PICs) for methyl chloride. The commenter stated that EPA claimed PIC emissions were not cause for concern because the reported waste in question happened to be managed in a hazardous waste combustor, and disagreed with EPA's presumption that this one waste management practice reported represents current and future combustion activities.

As noted above, the solvent uses of methyl chloride are very specialized, and the number of wastes sent for incineration are limited. The three wastes with reported concentrations that went to thermal treatment were all classified as hazardous waste and were treated as such under RCRA regulations. (Two wastes incinerated were treatment sludges that were reported to contain no significant levels of methyl chloride). Given these reported practices, and the very limited solvent uses for this chemical, EPA believes that combustion of solvent wastes with appreciable methyl chloride is likely to occur in RCRA regulated units. Therefore, the Agency believes its presumption for management is valid in this case. In addition, EPA is not aware of any precise way of predicting the kinds or levels of PICs that might be generated in a nonhazardous boiler, especially because the wastes in question would make up only a very small fraction of the wastes being treated.

Nevertheless, EPA did consider the possibility of PIC formation for incineration of methyl chloride wastes. As discussed in the preamble to the proposed rule (61 FR 42334), the amount of methyl chloride in the wastes that are incinerated is extremely small (i.e., 2 kg). The loading of methyl chloride sent to a boiler or industrial furnace (BIF), although larger (i.e., at 2,250 kg) than the amount sent to an incinerator, is in a waste that is hazardous due to ignitability and toxicity characteristics, and therefore must be treated as hazardous wastes. This latter waste is generated from the use of methyl chloride in butyl rubber manufacturing, and it is unlikely that such a complex process could (or would) be modified to avoid generating waste methyl chloride in association with high levels of ignitable hydrocarbons. Thus, combustion in a RCRA-regulated unit seems likely to occur for this waste due to the specialized nature of this solvent use. These combustion units are operated according to stringent air emission standards that limit PIC formation (e.g., see 40 CFR part 264, subpart O, for incinerators and part 266, subpart H, for Boilers and Industrial Furnaces). EPA has also proposed revisions to these standards (see 61FR1538, April 19, 1996 and 62FR24212, May 2, 1997). Given these facts, as well as the results of the risk assessment for these wastes, EPA

does not believe that combustion of these wastes poses a significant risk.

2-Methoxyethanol (2–ME). Decision EPA is not listing wastes from the solvent use of 2-methoxyethanol (2–ME) as hazardous waste under 40 CFR 261.31. As described in the proposed rule and as modified by subsequent analysis in response to comments, EPA found no significant risks from treatment in aerated tanks or combustion in a boiler. EPA also concluded that potential risks from air releases of 2–ME stored in open accumulation tanks are also not significant, because all of the nonwastewater residuals stored under this scenario are already regulated as hazardous waste, either because the wastes exhibit a characteristic, or because the 2–ME waste is commingled with listed wastes. EPA believes that regulatory controls afforded by the existing solvent listings and the characteristics (primarily ignitability) are sufficiently protective of human health and the environment.

None of the wastes examined were sent to land disposal in a landfill or impoundment. Spent solvent solids are thermally treated, and wastewaters are all treated in tanks. In the face of the existing practices, EPA finds it implausible that high organic wastes currently sent to thermal treatment would be sent to landfills. Essentially all of the nonwastewater residuals that contain spent 2–ME are thermally treated or recovered, and nearly all (96%) are treated as hazardous waste. Because all wastewaters are treated in tanks, EPA also does not expect risks from surface impoundment management for these wastes.

Given that nearly all of the nonwastewater 2–ME residuals are already being handled as hazardous, or contain negligible amounts of the solvent, these spent solvent residuals are not likely to pose a significant hazard to human health or the environment. Furthermore, treatment of wastewaters in tanks presents no significant risks. Therefore, the Agency continues to believe that a no-list decision is warranted.

More general comments on EPA's methodology and approach that relate to 2–ME are discussed elsewhere in today's document. The few comments specific to 2–ME are discussed below.

Specific comments. One commenter stated that EPA completely failed to evaluate potential risks from groundwater contamination, notwithstanding three groundwater contamination incidents involving this solvent identified by EPA from damage incidents.

EPA described in the proposed rule why the damage cases cited by the commenter were not useful (see 61 FR at 42332). Of the three problem site identified, two were old landfills that received a wide variety of industrial and municipal wastes, and the use of 2–ME prior to disposal was impossible to ascertain. The chemical is widely used as a fuel additive and as a chemical intermediate. Thus, the damage could not be tied to wastes generated from the use of this chemical as a solvent. Damage at the third site also could not be linked to a specific use of 2–ME. However, this site was a used oil recycling site, and the contamination found may be related to the use of 2–ME as a fuel additive. Furthermore, none of the reports examined by the Agency provided any concentration of 2–ME in the groundwater. Thus, the limited data from the damage incidents provide no reliable support for listing wastes from the use of 2–ME as a solvent. In addition, the industries EPA identified as solvent users of 2–ME are not represented in the damage incidents. Finally, the vast majority of nonwastewater solvent wastes identified in the Survey were reported to be hazardous waste, and could not be placed in nonhazardous landfills. Thus, the damage incidents did not provide useful information on current or likely future waste management practices.

One commenter argued that EPA's high-end risk analysis of onsite accumulation tank storage resulted in a HQ of 16, well above the HQ of 1 that typically warrants a hazardous waste listing. Only by performing the completely misguided Phase III assessment was EPA able to arguably rationalize a no-list decision.

EPA's response to this comment is similar to the response above to essentially the same comment raised for acetonitrile. The apparent risks cited by the commenter were from an intermediate stage of the risk assessment, and did not reflect the fact that all nonwastewaters were managed as hazardous waste. EPA concluded that the management scenario referred to in the comment (on-site accumulation of nonwastewaters in unregulated tanks) does not apply to any 2-methoxyethanol waste streams.

2-Ethoxyethanol Acetate (2–EEA). Decision. EPA is not listing wastes from the solvent use of 2-ethoxyethanol acetate (2–EEA) as hazardous waste under 40 CFR 261.31. As described in the proposed rule and as modified by subsequent analysis in response to comments, EPA found no significant risks from treatment in aerated tanks, storage in tanks, or combustion in a boiler. Furthermore, essentially all (99.8%) of the nonwastewaters were reported to be hazardous and were managed as hazardous waste through some form of thermal treatment.

None of the wastes were reported to go to land disposal in landfills or impoundments, and these scenarios were not modeled. Given the existing waste management practices, EPA finds it implausible that high organic waste solids currently sent to thermal treatment would be sent to a landfill. The high percentage of wastes that are hazardous are precluded from disposal in an unlined Subtitle D landfill, and EPA has no evidence to indicate that spent 2–EEA wastes would be placed in a landfill. Due to the nature of the primary industries using 2–EEA as a solvent (e.g., the semiconductor and electronics industries), very few wastewaters are generated. Nearly all of the wastestreams generated are spent solvent wastes that undergo some type of thermal treatment. None of the wastestreams that were reported in the 3007 Survey go to a surface impoundment. Any change from the current treatment in tanks to treatment in impoundments seems unlikely given the capital investment associated with tanks and the liability issues associated with treatment in a surface impoundment. These facilities made an investment in tank-based systems in the absence of any listing, and EPA sees no reason why this would change if the status quo is not changed, i.e., if the wastes are not listed. In addition to cost considerations, some facilities may perceive other benefits from managing the waters in tanks, such as the current exemption from RCRA permitting requirement for such units (see 40 CFR 264.1(g)(6)). If hazardous waste were to be treated in a wastewater treatment system, impoundments in the system would require permitting as a Subtitle C unit. In addition, the use of 2–EEA has been decreasing in recent years, thus other new generators of this spent solvent are unlikely.

Given that nearly all of the nonwastewater 2–EEA residuals are already being handled as hazardous, or contain negligible amounts of the solvent, these spent solvent residuals are not likely to pose a significant hazard to human health or the environment. Furthermore, treatment of wastewaters in tanks presents no significant risks. Therefore, the Agency continues to believe that a no-list decision is warranted.

More general comments on EPA's methodology and approach that relate to 2–EEA are discussed elsewhere in today's document. The few comments

related specifically to 2–EEA are discussed below.

Specific comments. Two commenters stated that EPA failed to consider in its risk assessment, that many of the generators manage 2–EEA with other solvents associated with this proposed rule. EPA calculated an HQ for 2–EEA for on-site accumulation of 0.7. Thus, additional risk from other solvents would cause the HQ level to exceed the threshold of one. One of the commenters went on to cite examples of facilities in several industries (e.g., printed circuit board manufacturers) at which multiple solvents were reported.

EPA disagrees with the commenters' concerns about multiple solvent risks. First, the comment cited examples where the hazard quotient would exceed one at facilities that use more than one solvent in combination. However, the use of the chemicals at the facilities cited by the commenter are not solvent use, within the Agency's definition. These facilities used 2-EEA and other chemicals as components in formulations. Thus, no spent solvent is generated and was not included in the risk assessment.

Furthermore, the HQ value of 0.7 cited by the commenter for on-site accumulation is likely to be unrealistically high for the reasons cited for the Phase II results for acetonitrile. The key reason is that essentially all residuals stored prior to thermal treatment were, in fact, already hazardous waste. Thus, air emissions from these wastes are already regulated under RCRA subpart CC to 40 CFR part 264, making the scenario of storage in an open tank unrealistic. EPA did not pursue a third phase of analysis for 2-EEA because the HQ was below one in the Phase II evaluation. Furthermore, the only wastes reported that were not hazardous consisted of one insignificant loading (<1 kg), and one waste characterized as ''containers/rags'' which contained very low levels of the solvent (<6 kg). Thus, EPA decided further analysis was not needed. As described in the Risk Assessment section, EPA addressed the general comment of the impact of multiple solvents in some wastes by conducting an assessment of the potential for cumulative risks.

One commenter stated that the concentrations of 2-EEA in solvent nonwastewaters range from 0.1% to 100%. These ranges are not consistent with the Agency's position that nonwastewaters would always be managed as a hazardous waste due to ignitability, particularly where the solvent is not co-managed with listed solvent wastes. The commenter was also concerned because the concentration of 2-EEA in wastewaters ranges from 200–20,000 ppm.

While the levels of 2-EEA in solvent nonwastewaters are variable, the reported data clearly indicate that essentially all 2-EEA solvent wastes generated were hazardous, and that these were all incinerated. Concerning the wastewaters, EPA believes the commenter's concern is unfounded. EPA's risk assessment included an analysis of potential risks from air releases from an aerated wastewater treatment tank, and found risks to be well below levels of concern.

Furfural. Decision. EPA is not listing wastes from the solvent use of furfural as hazardous waste under 40 CFR 261.31. As described in the proposed rule and as modified by subsequent analysis in response to comments, EPA found no significant risks from treatment in aerated tanks or surface impoundments, storage in tanks, or combustion in boilers. Essentially all of the solvent use of this chemical (greater than 99.99%) is in the petroleum industry as an extractant for lube oil. Thus, solvent use of furfural is limited, and the Agency identified only a handful of wastes derived from this use.

The furfural solvent wastes are virtually all wastewaters (greater than 99.99%), which were managed in wastewater treatment systems. One of the three facility's wastewater treatment systems uses a surface impoundment, and EPA's bounding analysis for the proposed rule showed no risks of concern from ingestion of groundwater, or inhalation of possible air releases (HQ <1; see 61 FR at 42341).

In response to comments, EPA conducted further analyses of the potential risks that might arise from treatment of furfural wastewaters in a surface impoundment. In these analyses EPA also included consideration of any additional risk resulting from non-ingestion exposure from groundwater (e.g., inhalation). As shown in Table 3, the high-end risk analyses showed that these wastewaters do not present significant risks via either groundwater releases (HQ = 0.46), or air releases (HQ = 0.11).

Based the results of the risk analyses in the proposal, the updated evaluations, and the other factors discussed in this document and the proposal, the furfural solvent wastes are not likely to pose a significant hazard to human health or the environment. Therefore, the Agency continues to believe that a no-list decision is warranted.

General comments on EPA's methodology and approach that relate to furfural are discussed elsewhere in today's document. EPA did not receive any other specific comments on EPA's decision not to list furfural solvent wastes.

Cumene. Decision. EPA is not listing wastes from the solvent use of cumene as hazardous waste under 40 CFR 261.31. As described in the proposed rule and as modified by subsequent analysis in response to comments, EPA found no significant risks from treatment in aerated tanks, storage in tanks, or combustion in boilers. While cumene is used in large volumes in the production of other chemicals, such as phenol, its use as a solvent is limited. Essentially all of the wastes containing cumene are thermally treated as hazardous or recovered. Small amounts of wastewaters are sent to treatment systems, and one resulting sludge was reported to be landfilled. However, the amount of cumene in this sludge would be well below the maximum of 28 kg that was used in the original solvent mixture (which contained only 1.7 % of cumene to start with). Thus, after treatment, any risks from cumene would be negligible. Similarly, one wastewater was reported to undergo treatment in a surface impoundment, however, as EPA noted in the proposal, the amount of cumene in the wastewater was small (<47 kg), and would be further reduced by treatment.

In response to comments, EPA conducted further analyses of the potential risks that might arise from treatment of cumene wastewaters in a surface impoundment. In these analyses EPA also included consideration of any additional risk resulting from non-ingestion exposure from groundwater (e.g., inhalation during showering). As shown in Table 2, the revised bounding analyses showed that these wastewaters in impoundments do not present significant risks via either groundwater releases (HQ = 0.0001), or air releases (HQ = 0.003). As noted earlier in today's document, the toxicological values for cumene were updated during the comment period. The new benchmarks were used in the revised analyses, and were also used to recalculate risks derived in the proposed rule (see Table 1). The changes reflect greater tolerance for cumene than the previous benchmarks, and thus have no impact on EPA's decision not to list cumene solvent wastes.

EPA also considered the potential for cumene to form NAPLs, which might present special problems in assessing potential risks. EPA noted in the proposed rule that cumene's water solubility is relatively low, such that NAPLs are theoretically possible.

However, EPA considered the potential risks from NAPLs to be very low, because cumene loading in wastes sent to land-based disposal was minimal. In response to comments, EPA provided further analysis showing that NAPL formation for these wastes is unlikely (see section IV.B).

Based the results of the risk analyses in the proposal, the updated evaluations, and the other factors discussed in this document and the proposal, the cumene solvent wastes are not likely to pose a significant hazard to human health or the environment. Therefore, the Agency continues to believe that a no-list decision is warranted.

General comments on EPA's methodology and approach that relate to cumene are discussed elsewhere in today's document.

Cyclohexanol. Decision. EPA is not listing wastes from the solvent use of cyclohexanol as hazardous waste under 40 CFR 261.31. As described in the proposed rule and as modified by subsequent analysis in response to comments, EPA found no significant risks from accumulation in storage in tanks or combustion in boilers. The solvent uses of cyclohexanol are limited, and few wastes containing cyclohexanol were reported. All wastes but one are hazardous waste due to other waste constituents or properties of the waste material. The incinerated material contains low levels of cyclohexanol (16 kg total loading per year). The one other waste generated was reported to go to a nonhazardous landfill, however, this waste is a small volume (750 kg) of filter material that contains negligible level of cyclohexanol. Given the limited solvent uses of this chemical, and the management practices reported, EPA believes other wastes or management practices are not likely to be significant.

As noted earlier in today's document, the toxicological inhalation benchmark (''provisional RfC'') for cyclohexanol was adjusted somewhat based on peer review comments. Thus, EPA used the new benchmark to recalculate risks derived in the proposed rule (see Table 3). The revised HQs remain below one, and thus the updated health-based number has no material effect on EPA's decision not to list cyclohexanol solvent wastes.

Based the results of the risk analyses in the proposal, the updated evaluations, and the other factors discussed in this document and the proposal, the cyclohexanol solvent wastes are not likely to pose a significant hazard to human health or the environment. Therefore, the Agency continues to believe that a no-list decision is warranted.

More general comments on EPA's methodology and approach that relate to cyclohexanol are discussed elsewhere in today's document.

Isophorone. Decision. EPA is not listing wastes from the solvent use of isophorone as hazardous waste under 40 CFR 261.31. As described in the proposed rule and as modified by subsequent analysis in response to comments, EPA found no significant risks from accumulation in storage in tanks or combustion in boilers. The solvent uses of isophorone are limited, and few wastes containing isophorone were reported. All wastes but one were hazardous waste due to mixture with other listed wastes or the ignitability characteristic of the waste material. All wastes were reported to undergo some form of thermal treatment as a hazardous waste. Given the limited solvent uses of this chemical, and the management practices reported, EPA believes other wastes or management practices are likely to be significant.

As noted earlier in today's document, the toxicological value (''provisional RfC'') for isophorone was adjusted somewhat based on peer review comments. Thus, EPA used the new benchmark to recalculate risks derived in the proposed rule (see Table 1). The revised HQs remain below one, and thus the updated health-based number has no material effect on EPA's decision not to list isophorone solvent wastes.

Based on the results of the risk analyses in the proposal, the updated evaluations, and the other factors discussed in this document and the proposal, the isophorone solvent wastes are not likely to pose a significant hazard to human health or the environment. Therefore, the Agency continues to believe that a no-list decision is warranted.

More general comments on EPA's methodology and approach that relate to isophorone are discussed elsewhere in today's document.

2-Methoxyethanol Acetate (2-MEA). Decision. EPA is not listing wastes from the solvent use of 2-methoxyethanol acetate (2-MEA) as hazardous waste under 40 CFR 261.31. As described in the proposed rule and as modified by subsequent analysis in response to comments, EPA found no significant risks from storage in tanks or combustion in a boiler. 2-MEA is reportedly no longer produced domestically, and solvent use of this chemical is limited. The few wastes generated were classified as hazardous and were all thermally treated as hazardous waste. Given the limited and decreasing use as a solvent, and the waste information reported, EPA believes that other wastes and management practices are unlikely. None of the wastes were reported to be disposed of in landfills or impoundments, and these scenarios were not modeled.

Given the existing practice, EPA finds it implausible that high organic waste solids currently sent to thermal treatment would be sent to a landfill. The wastes are hazardous and thus precluded from disposal in an unlined Subtitle D landfill. EPA has no evidence to indicate that spent 2-MEA wastes would be placed in a landfill. Due to the nature of the solvent uses reported for 2-MEA (diluent in coating and reaction media), no wastewaters are generated, nor were they expected.

Based on the results of the risk analyses in the proposal, the updated risk analysis, and other factors noted above and in the proposed rule, these spent solvent residuals are not likely to pose a significant hazard to human health or the environment. Therefore, the Agency continues to believe that a no-list decision is warranted.

More general comments on EPA's methodology and approach that relate to isophorone are discussed elsewhere in today's document. EPA did not receive any specific comments on EPA's decision not to list 2-MEA solvent wastes.

Chemicals with no significant solvent use. As described in the proposed rule and reaffirmed in this final decision, EPA did not find any significant solvent use for four chemicals: p-dichlorobenzene, benzyl chloride, epichlorohydrin, and ethylene dibromide. All but one are relatively reactive chemicals, which makes them unsuitable for most solvent applications. The other substance, p-dichlorobenzene, is a solid at room temperature, limiting its utility as a solvent. In all cases, the data collected by the Agency showed that any solvent use of these chemicals is extremely limited. Some may perhaps have specialty applications in laboratories, but no significant solvent uses were identified. Any residuals reported from the 3007 Survey were primarily from possible solvent use by laboratories and contain low levels of the chemicals under study. All were coded as hazardous, except one dilute wastewater, and were thermally treated as hazardous waste.

The Agency received no new information during the comment period indicating that these four chemicals, (benzyl chloride, epichlorohydrin, ethylene dibromide, and p-

dichlorobenzene) were used as solvents. Comments received by EPA on this issue concurred with the Agency's decision that these four chemicals are not used as solvents, and that they would not fit the description for such a listing. Based on the analyses and factors noted above and in the proposed rule, these spent solvent residuals do not pose a significant hazard to human health or the environment. Therefore, the Agency continues to believe that no-list decisions for these four chemicals are warranted.

V. Regulatory Requirements

A. Regulatory Impact Analysis Pursuant to Executive Order 12866

Executive Order No. 12866 requires agencies to determine whether a regulatory action is ''significant.'' The Order defines a ''significant'' regulatory action as one that ''is likely to result in a rule that may: (1) have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.''

The Agency estimated the costs of today's final rule to determine if it is a significant regulation as defined by the Executive Order. Because the Agency has decided not to list as hazardous the wastes generated from the use of the solvents evaluated in this rulemaking, no specific action is required under this action. As a result, there are no costs associated with this final rule. This rule was deemed significant for novel policy reasons by the Office of Management and Budget (OMB) and was submitted to OMB for review.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a document of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. The following discussion explains EPA's determination. This rule has no effect as the Agency is issuing this final decision not to list wastes generated from the use of 14 chemicals as solvents as hazardous under the Resource Conservation and Recovery Act (RCRA). The determinations in this rule are limited to specific solvent wastes. The rule does not impose new burdens on small entities. Therefore, I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. This rule, therefore, does not require a regulatory flexibility analysis.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law No. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate. The rule would not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. States, tribes and local governments have no compliance costs under this rule. For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. By these findings, EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

D. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 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 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 a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities.

It issues a final decision not to list wastes generated from the use of 14 chemicals as solvents as hazardous under the Resource Conservation and Recovery Act (RCRA). Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

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

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 final rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The Agency performed a risk assessment to assist in its determination whether to list or not to list the solvent wastes in this final rule as hazardous waste. This risk assessment calculated the potential risk resulting from the current management of these wastes to individuals (including sensitive populations like children). The Agency has determined that management of these solvent wastes as hazardous is not required and that the environmental health risks or safety risks addressed by this action do not have a disproportionate effect on children.

F. Environmental Justice E.O. 12898

EPA is committed to addressing environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health and environmental impacts as a result of EPA's policies, programs, and activities, and that all people live in clean and sustainable communities. In response to Executive Order 12898 and to concerns voiced by many groups outside the Agency, EPA's Office of Solid Waste and Emergency Response formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3–17). The Agency has determined that a hazardous waste listing is not justified for the wastes examined in this rule. As a result, no specific action is required under this rule. It is, therefore, not expected to result in any disproportionately negative impacts on minority or low income communities relative to affluent or non-minority communities.

G. Paperwork Reduction Act

This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

H. National Technology Transfer and Advancement Act

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

I. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, 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, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to 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 officials 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. As mentioned above, no specific action is required by this action. 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 3(b) of Executive Order 13084 do not apply to this rule.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA has submitted 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 in 40 CFR Part 261

Environmental protection, Hazardous materials, Waste treatment and disposal, Recycling.

Dated: October 30, 1998.

Carol M. Browner,

Administrator.

[FR Doc. 98–30601 Filed 11–18–98; 8:45 am]

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federal register

Thursday
November 19, 1998

Part V

The President

Proclamation 7147—National Farm-City Week, 1998

Proclamation 7148—Thanksgiving Day, 1998

Federal Register
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Thursday, November 19, 1998

Presidential Documents

Title 3—

The President

Proclamation 7147 of November 17, 1998

National Farm-City Week, 1998

By the President of the United States of America

A Proclamation

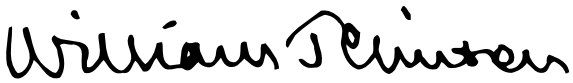
Thanks in large part to our Nation's farmers, the quality of life the American people enjoy today is the envy of the world. Farmers and ranchers provide us with a safe, abundant, and affordable supply of food and fiber. American agriculture remains one of our country's most important and productive industries, generating more than 22 million jobs and contributing a trillion dollars to the American economy each year. Today's farmers and ranchers also serve as guardians of our precious environment. Using modern technology and environmentally responsible methods, they have improved our Nation's water supply, worked to reduce soil erosion, and restored thousands of acres of wetlands.

This remarkable record of achievement would not be possible, however, without the essential farm-city partnerships that contribute so much to the productivity of America's farms and ranches. From seed and fertilizer merchants to agricultural processors, from research scientists in the laboratory to extension agents in the field, from shippers and manufacturers to inspectors and grocers, urban and rural Americans work together to share the bounty of this land with their fellow citizens and with people around the world.

For more than 40 years, Americans have set aside this special week to recognize and reflect upon the importance of these partnerships in sustaining our Nation's strength and prosperity. As we celebrate Thanksgiving with family and friends, let us remember to count among our many blessings America's agricultural abundance and the collaboration between rural and urban communities that has contributed so much to the quality of our lives.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 20 through November 26, 1998, as National Farm-City Week. I call upon all Americans, in rural and urban communities alike, to join in recognizing the accomplishments of our farmers and all the hardworking individuals who cooperate to produce a wealth of affordable, quality agricultural goods that strengthen and enrich our country.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of November, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-third.



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Presidential Documents

Proclamation 7148 of November 17, 1998

Thanksgiving Day, 1998

By the President of the United States of America

A Proclamation

Thanksgiving Day is one of America's most beloved and widely celebrated holidays. Whether descendants of the original colonists or new citizens, Americans join with family and friends to give thanks to a provident God for the blessings of freedom, peace, and plenty.

We are a Nation of people who have come from many countries, cultures, and creeds. The colonial Thanksgiving at Plymouth in 1621, when the Pilgrims of the Old World mingled in fellowship and celebration with the American Indians of the New World, foreshadowed the challenge and opportunity that such diversity has always offered us: to live together in peace with respect and appreciation for our differences and to draw on one another's strengths in the work of building a great and unified Nation.

And so at Thanksgiving we must also remember to be thankful for the many contributions each generation of Americans has made to preserve our blessings. We are thankful for the brave patriots who have fought and died to defend our freedom and uphold our belief in human dignity. We are thankful for the men and women who have worked this land throughout the decades, from the stony farms of New England to the broad wheat fields of the Great Plains to the fertile vineyards of California, sharing our country's bounty with their fellow Americans and people around the world. We are thankful for the leaders and visionaries who have challenged us through the years to fulfill America's promise for all our people, to make real in our society our fundamental ideals of freedom, equality, and justice. We are thankful for the countless quiet heroes and heroines who work hard each day, raise their families with love and care, and still find time and energy to make their communities better places in which to live. Each of us has reason to be proud of our part in building America, and each of us has reason to be grateful to our fellow Americans for the success of these efforts.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Thursday, November 26, 1998, as a National Day of Thanksgiving. I encourage all the people of the United States to assemble in their homes, places of worship, or community centers to share the spirit of goodwill and prayer; to express heartfelt thanks to God for the many blessings He has bestowed upon us; and to reach out in true gratitude and friendship to our brothers and sisters across this land who, together, comprise our great American family.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of November, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-third.

William J. Clinton

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Interstate, interexchange marketplace; telecommunications services, enhanced services, and customer premises equipment; bundling restrictions; comments due by 11-23-98; published 10-23-98

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Michigan; comments due by 11-23-98; published 10-9-98

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Foreign acquisition; Part 25 rewrite; comments due by 11-27-98; published 9-28-98

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Railroad grade crossing safety; sufficient space; comments due by 11-27-98; published 7-30-98

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Miscellaneous amendments; comments due by 11-23-98; published 9-22-98

Steam locomotive inspection and maintenance standards; comments due by 11-24-98; published 9-25-98

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National Highway Traffic Safety Administration

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Electric vehicles—

Battery electrolyte spillage, post-crash retention of batteries in their mounts, and electrical shock hazard; comments due by 11-27-98; published 10-13-98

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Qualified State tuition programs; comments due by 11-23-98; published 8-24-98

LIST OF PUBLIC LAWS

This completes the listing of Public Laws enacted during the second session of the 105th Congress. 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/nara/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

The list will resume when bills are enacted into Public Law during the first session of the 106th Congress, which convenes on January 6, 1999. A cumulative list of Public Laws will be published in the **Federal Register** on November 30, 1998.

H.R. 633/P.L. 105–382

Department of State Special Agents Retirement Act of 1998 (Nov. 13, 1998; 112 Stat. 3406)

H.R. 2204/P.L. 105–383

Coast Guard Authorization Act of 1998 (Nov. 13, 1998; 112 Stat. 3411)

H.R. 3461/P.L. 105–384

To approve a governing international fishery agreement between the United States and the Republic of Poland, and for other purposes. (Nov. 13, 1998; 112 Stat. 3451)

H.R. 4283/P.L. 105–385

Africa: Seeds of Hope Act of 1998 (Nov. 13, 1998; 112 Stat. 3460)

S. 191/P.L. 105–386

To throttle criminal use of guns. (Nov. 13, 1998; 112 Stat. 3469)

S. 391/P.L. 105–387

Mississippi Sioux Tribes Judgment Fund Distribution Act of 1998 (Nov. 13, 1998; 112 Stat. 3471)

S. 417/P.L. 105–388

Energy Conservation Reauthorization Act of 1998 (Nov. 13, 1998; 112 Stat. 3477)

S. 1397/P.L. 105–389

Centennial of Flight Commemoration Act (Nov. 13, 1998; 112 Stat. 3486)

S. 1525/P.L. 105–390

Police, Fire, and Emergency Officers Educational Assistance Act of 1998 (Nov. 13, 1998; 112 Stat. 3495)

S. 1693/P.L. 105–391

National Parks Omnibus Management Act of 1998 (Nov. 13, 1998; 112 Stat. 3497)

S. 1754/P.L. 105–392

Health Professions Education Partnerships Act of 1998 (Nov. 13, 1998; 112 Stat. 3524)

S. 2364/P.L. 105–393

Economic Development Administration and Appalachian Regional Development Reform Act of 1998 (Nov. 13, 1998; 112 Stat. 3596)

S. 2432/P.L. 105–394

Assistive Technology Act of 1998 (Nov. 13, 1998; 112 Stat. 3627)

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