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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 201

[Docket No. 78N–036L]

RIN 0910–AA01

Drug Labeling; Warning and Direction Statements for Rectal Sodium Phosphates for Over-the-Counter Laxative Use; Final Rule; Stay of Compliance

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; stay of compliance.

SUMMARY: The Food and Drug Administration (FDA) is staying compliance for the regulation for warning and direction statements for over-the-counter (OTC) dibasic sodium phosphate/monobasic sodium phosphate (sodium phosphates) drug products intended for rectal (enema) use until December 7, 1998. The regulation established conditions under which the labeling must include warning and direction statements for oral and rectal sodium phosphates products. This stay of compliance applies only to rectal sodium phosphates products and is in response to requests and a citizen petition that the final rule did not allow sufficient time for relabeling of these products. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Section 201.307(b)(2)(ii) and (b)(3)(i) published on May 21, 1998 (63 FR 27836), are effective September 18, 1998, however, compliance with § 201.307(b)(2)(ii) and (b)(3)(i) as they relate to rectal sodium phosphates products is not mandatory until December 7, 1998.

FOR FURTHER INFORMATION CONTACT: Cheryl A. Turner, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2291.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of March 31, 1994 (59 FR 15139), the agency proposed to amend the tentative final monograph for over-the-counter (OTC) laxative drug products to limit the OTC container size for sodium phosphates oral solution to not greater than 90 milliliters (mL). The agency also proposed a warning for all sodium phosphates products not to exceed the recommended dosage unless directed by a doctor.

In the **Federal Register** of May 21, 1998 (63 FR 27836), FDA issued a final rule for OTC laxative drug products containing sodium phosphates § 201.307(b)(1), (b)(2), and (b)(3) (21 CFR 201.307(b)(1), (b)(2), and (b)(3)) establishing a container size limitation of 90 mL for oral sodium phosphates (sodium phosphates oral solution), and new warning and direction statements for OTC oral and rectal sodium phosphates for relief of occasional constipation, or for preparing the colon for x-ray or endoscopic examination. On May 21, 1998 (63 FR 27886), FDA also issued a proposed rule to amend the tentative final monograph for OTC laxative drug products (21 CFR 334.16 and 334.58) to include additional general labeling and professional labeling for oral and rectal sodium phosphates and a new time-to-effect statement for rectal products.

The final rule requires manufacturers to add certain new labeling for rectal sodium phosphates drug products. The new warning in § 201.307(b)(2)(ii) states: ''Using more than one enema in 24 hours can be harmful.'' The new directions in § 201.307(b)(3)(i) state: ''Do not'' (''take'' or ''use'') ''more unless directed by a doctor. See Warnings.'' The final rule specified an effective date of September 18, 1998, for these warning and direction statements for rectal sodium phosphates products.

In the final rule (63 FR 27836 at 27842), the agency stated that relabeling costs of the type required by this final rule generally average about $2,000 to $3,000 per stock keeping unit (SKU) (individual products, packages, and sizes). At that time, the agency was aware of three manufacturers that together produce approximately 125 SKU's of rectal sodium phosphates drug products. The agency mentioned that there may be a few additional small manufacturers or a few additional products in the marketplace that are not identified in the sources FDA reviewed. The agency stated that some entities, especially those private label manufacturers that provide labeling for a number of the affected products, may incur significant impacts (63 FR 27836 at 27843).

In response to the final rule, the agency received two comments (Refs. 1 and 2) and two citizen petitions (Ref. 3). One private label manufacturer (Ref. 1) stated that the economic impact of the final rule was severe because it currently had 126 SKU's of rectal sodium phosphates products. The manufacturer stated that its relabeling cost was approximately $3,500 per SKU or $441,000. In addition, the cost of stickering the current inventory of 2 million printed folding cartons is $160,000 with a capital expenditure of $25,000. The cost of obsolescence for unused printed folding cartons during the transition period was estimated to be $100,000, making total costs approximately $776,000. The manufacturer requested that the implementation date of the final rule for enema products be 1 year after its effective date. A major manufacturer of oral and rectal sodium phosphates products (Ref. 2) objected to the content of the final rule and argued that the new warning and direction statements were not justified for rectal sodium phosphates products.

On July 15, 1998, at a public meeting between representatives of FDA and industry (Ref. 4), industry representatives stated the following concerns: (1) The warning in § 201.307(b)(2)(ii) would be confusing for consumers because it may conflict with how some physicians prescribe rectal sodium phosphates for cleansing the bowel in preparation for a medical procedure, and (2) 120 days is not enough time for manufacturers to relabel their rectal sodium phosphates products. Industry representatives suggested that the agency revise the warning to read: ''Use only one enema in 24 hours unless recommended by a doctor. Serious side effects may occur from excess dosage.'' No revisions were

suggested for the direction statement in § 201.307(b)(3)(i).

Petitions (Ref. 3) for a ''stay of action and reconsideration'' for OTC enemas containing sodium phosphates, submitted in response to this meeting, requested: (1) An indefinite stay of the warning and directions required by § 201.307(b)(2)(ii) and (b)(3)(i), (2) revision of the warning in § 201.307(b)(2)(ii) to read: ''Do not use more than one enema in a 24-hour period unless directed by a doctor,'' and (3) revision of the directions in § 201.307(b)(3)(i) to read: ''Use only single daily dose unless directed by a doctor. See Warnings.''

II. The Agency's Response

The agency acknowledged in its analysis of impacts in the final rule (63 FR 27836 at 27842) that private label manufacturers that provide labeling for a number of the affected products may incur significant impacts. Based on the comment's information (Ref. 1), the agency agrees that the economic impact for this specific manufacturer is high. In addition, other industry representatives concurred that 120 days was insufficient time for manufacturers to relabel their rectal sodium phosphates products. Therefore, the agency is staying compliance with the regulation for relabeling of rectal sodium phosphates products until December 7, 1998, to provide manufacturers additional time to comply with the labeling requirements of the final rule. Industry was previously informed of this stay of compliance with the regulation (Ref. 5). The agency is not granting a longer stay of compliance or an indefinite stay of compliance of this portion of the final rule because of the safety concerns discussed in the final rule (63 FR 27836 at 27840 to 27841).

The petitioner's request for reconsideration and revision of the warning and direction statements based on professional uses of these products is denied (Ref. 5). The warning in the March 31, 1994, proposed rule (59 FR 15139 at 15142) was intended to promote the safe, direct consumer use of these products. The agency considers the warning in § 201.307(b)(2)(ii) and the directions in § 201.307(b)(3)(i) in the May 21, 1998, final rule consistent with the safe, direct consumer use of rectal sodium phosphates products as intended in the proposed rule. The agency may reconsider the wording in this labeling if convincing data are submitted that demonstrate consumer confusion. The agency believes that professional labeling for these products, which will be reproposed in a future issue of the **Federal Register**, will address any remaining labeling concerns.

Publication of this document constitutes final action on the warning and labeling directions for rectal sodium phosphates products in § 201.307(b)(2)(ii) and (b)(3)(i) under the Administrative Procedure Act (5 U.S.C. 553). Because this final rule is a stay of compliance of the regulation, FDA finds that the notice and comment procedures are unnecessary and not in the public interest (5 U.S.C. 553(b) and (d)). The agency believes that staying compliance with the regulation, as it relates to rectal sodium phosphates products, until December 7, 1998, will provide sufficient time for industry to implement the labeling revisions required for rectal sodium phosphates products.

III. References

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

1. Comment No. C190, Docket No. 78N–036L, Dockets Management Branch.

2. Comment No. LET176, Docket No. 78N–036L, Dockets Management Branch.

3. Comment No. PRC1, Docket No. 78N–036L, Dockets Management Branch.

4. Comment No. MM16, Docket No. 78N–036L, Dockets Management Branch.

5. Letter from D. Bowen, FDA, to P. Reichertz, Arent Fox Kintner Plotkin & Kahn, coded LET178, Docket No. 78N–036L, Dockets Management Branch.

IV. Analysis of Impacts

The economic impact of the final regulation was discussed in the final rule (63 FR 27836 at 27842 and 27843). A stay of compliance for the warning and direction statements for rectal sodium phosphates products will provide additional time for companies to relabel these products and will reduce label obsolescence, as there will be additional time to use up more existing labeling. Thus, this final rule granting a stay of compliance should reduce the economic impact on industry.

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

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. This final rule provides a stay of compliance, which will provide manufacturers additional time to use up existing product labeling. Accordingly, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

V. Paperwork Reduction Act of 1995

FDA concludes that the labeling requirements in this document are not subject to review by the Office of Management and Budget because they do not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Rather, the labeling is a ''public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)).

VI. Environmental Impact

The agency has determined under 21 CFR 25.31(c) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: December 1, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–32391 Filed 12–4–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07 98–075]

RIN 2115–AE46

Special Local Regulations; BellSouth Winterfest Boat Parade, Broward County, Fort Lauderdale, Fl

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Temporary Special local regulations are being adopted for the BellSouth Winterfest Boat Parade. The event will be held on December 12, 1998, on the waters of the Port Everglades turning basin and the Intracoastal Waterway from Dania Sound Light 35 (LLNR 47575) to the Pompano Beach Day Beacon 74 (LLNR 47230). The regulations are needed to provide for the safety of life on navigable waters during the event.

DATES: These regulations become effective at 5 p.m. and terminate at 10 p.m. EST on December 12, 1998.

FOR FURTHER INFORMATION CONTACT: QMCS T.E. KJERULFF, Coast Guard Group, Miami, Florida at (305) 535–4448.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The BellSouth Winterfest Boat Parade is a nighttime parade of approximately 110 pleasure boats ranging in length from 20 feet to 200 feet decorated with holiday lights. Approximately 1000 spectator craft are anticipated. The parade will form in the staging area at the Port Everglades turning basin then proceed north on the Intracoastal Waterway (ICW) to Lake Santa Barbara where the parade will disband. The regulated area includes the staging area and the parade route. The staging area encompasses the Port Everglades turning basin, north to Dania Sound Light 35 LLNR 42865. The parade route encompasses the Intracoastal Waterway from Dania Sound Light 35 (LLNR 47575) to Pompano Beach day beacon 74 (LLNR 47230). No anchoring is permitted in the staging area. Further, no anchoring is permitted in the vicinity of the viewing area which extends from the Sunrise Blvd Bridge south to the New River Sound Light 3 (LLNR 47240) west of the ICW. During the parade transit, these regulations prohibit nonparticipating vessels from approaching within 500 feet ahead of the lead vessel in the parade to 500 feet astern of the last participating vessel in the parade to within 50 feet on either side of the parade, unless authorized by the Patrol Commander. After the passage of the parade participants, all vessels will be allowed to resume normal operations at the discretion of the Patrol Commander.

In accordance with 5 U.S.C. § 553, good cause exist for making these regulations effective less than 30 days after the **Federal Register** publication. Publishing a Notice of Proposed Rulemaking and delaying the effective date would be contrary to national safety interest since immediate action is needed to minimize potential danger to the public as the permit was only recently received from the event organizer.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Entry into the regulated area is prohibited for only 5 hours on the day of the event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this rulemaking will have a significant economic impact on a substantial number of small entities. Small entities include small business, 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.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities, as the regulations will only be in effect for approximately five hours in a limited area of the ICW.

Collection of Information

These regulations contain no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

Federalism

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

Environmental Assessment

The Coast Guard has considered the environmental impact of this action and has determined pursuant to Figure 2–1, paragraph 34(h) of Commandant Instruction M16475.1C, that this action is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), reporting and recordkeeping requirements. Waterways.

Temporary Regulations

In consideration of the foregoing, the Coast Guard amends Part 100 of Title 33, Code of Federal Regulations, as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35T–07–075 is added to read as follows:

§ 100.35T–07–075 Bellsouth Winterfest Boat Parade, Broward County, Ft. Lauderdale, FL

(a) *Definitions:*

(1) *Staging Area:* The staging area is the Port Everglades Turning Basin and that portion of the Intracoastal Waterway extending from Port Everglades Turning Basin to Dania Sound light 35 (LLNR 42865).

(2) *Parade Route:* The parade route includes the Intracoastal Waterway from Dania Sound light 35 (LLNR 47575) to Pompano Beach daybeacon 74 (LLNR 47230).

(3) *Viewing area:* The viewing area extends from the Sunrise Blvd Bridge south to the New River Sound Light 3 (LLNR 47240) west of the ICW.

(4) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Miami, Florida. The Coast Guard assumes no responsibility for the operation of the event, the safety of participants and spectators, the safety of transient craft, and the qualification and instruction of participants. These

responsibilities rest solely with the sponsor of the event.

(b) *Special Local Regulations:*

(1) Staging area: Entry or anchoring in the staging area by nonparticipating vessels is prohibited, unless authorized by the Patrol Commander.

(2) Parade route: During the parade transit, nonparticipating vessels are prohibited from approaching within 500 feet ahead of the lead vessel in the parade to 500 feet astern of the last participating vessel in the parade to within 50 feet on either side of the parade unless authorized by the Patrol Commander.

(3) Viewing Area: Anchoring in the vicinity of the viewing area is prohibited.

(4) Miscellaneous: A succession of not fewer than 5 short whistle or horn blasts from a patrol vessel will be the signal for any non-participating vessel to stop immediately. The display of an orange distress smoke signal from a patrol vessel will be the signal for any and all vessels to stop immediately. At the discretion of the Patrol Commander, all vessels may resume normal operations after the passage of the parade participants.

(c) *Dates:* These regulations become effective at 5 p.m. and terminate at 10 p.m. EST on December 12, 1998.

Dated: November 20, 1998.

Norman T. Saunders,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 98–32404 Filed 12–4–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–98–009]

RIN 2115–AE47

Drawbridge Operation Regulations; Billy's Creek, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulations governing the operation of the State Road 80 bridge, across Billy's Creek, Fort Myers, Lee County by changing the operating regulations to allow the drawbridge to remain closed. This action will accommodate the needs of auto traffic and still provide for the reasonable needs of navigation.

DATES: The rule becomes effective January 6, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky, Project Manager, Bridge Section, (305) 536–4103.

SUPPLEMENTARY INFORMATION:

Regulatory History

On June 1, 1998, the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operations Regulations, Billy's Creek, FL in the **Federal Register** (63 FR 29676). The Coast Guard received one comment on the proposal. A public hearing was not requested and one was not held.

Background and Purpose

The State Road 80 bridge across Billy's Creek near Fort Myers currently is required to open with 24 hours advance notice. However, no requests for bridge opening have been received since 1987.

Discussion of Comments and Changes

One comment was received from a property owner along the river requesting that the bridge not be permanently closed, as there is a potential for increased traffic in the area as the property is zoned for commercial use and it could be developed as a marine facility. The Coast Guard agrees, and a provision has been added to restore the bridge to operable condition within 6 months of notification by the District Commander to do so.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of the 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 proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. We conclude this because of the lack of requests to open the draw.

Small Entities

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

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

Collection of Information

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

Federalism

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

Environmental Assessment

The Coast Guard considered the environmental impact of this rule and concluded under Figure 2–1, paragraph 32 of Commandant Instruction M16475.1C, that the promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' has been prepared and is available in the docket for inspection or copying.

List of Subjects in 33 CFR Part 117

Bridges.

Final Regulations: In consideration of the foregoing, the Coast Guard amends 33 CFR Part 117 as follows:

PART 117—[Amended]

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).

2. Section 117.268 is added to read as follows:

§ 117.268 Billy's Creek.

The draw of the State Road 80 bridge at Fort Myers need not be opened for the passage of vessels; however, the draw shall be restored to operable condition within 6 months after notification by the District Commander to do so.

Dated: November 2, 1998.

Norman T. Saunders,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 98–32405 Filed 12–4–98; 8:45 am]

BILLING CODE 4910–15–M

POSTAL SERVICE

39 CFR Part 491

Garnishment of Postal Employee Salaries

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: These amended regulations implement the statutory provision which provides that the pay of employees of the United States Postal Service and the Postal Rate Commission will be subject to garnishment orders.

EFFECTIVE DATE: January 6, 1999.

FOR FURTHER INFORMATION CONTACT: William B. Neel, Attorney, Law Department Mid-Atlantic Office, (202) 314–6814.

SUPPLEMENTARY INFORMATION: On October 6, 1993, Congress enacted section 9 of Public Law 103–94 entitled, ''Garnishment of Federal Employees' Pay.'' This law is a limited waiver of the Federal Government's sovereign immunity to permit pay from an agency to an employee to be garnished by federal, state and local legal process, subject to certain limitations. Child support garnishment is already covered by other federal law. On February 3, 1994, the President signed Executive Order 12897, which delegated responsibility to the Postal Service to issue implementing regulations for its employees and for the employees of the Postal Rate Commission. These regulations are amended in accordance with this delegation of authority.

The Postal Service is amending its regulations implementing garnishment withholding under Section 9 of Public Law 103–94. This federal law supersedes state law with regard to a variety of issues in garnishment. Accordingly, regardless of state law, legal process must be in conformity with these regulations.

This waiver of immunity for the garnishment process confers jurisdiction only over an employee's pay, and does not confer jurisdiction over the Postal Service or the Postal Rate Commission as a party to a lawsuit, nor does it waive immunity for the purpose of orders to show cause or for penalties or sanctions such as default judgments. In *First Virginia Bank* v. *Randolph,* 920 F.Supp. 213 (D.D.C. 1996), rev'd., No. 96–5205 (D.C. Cir. April 11, 1997) the Circuit Court held that the Federal Government's waiver of sovereign immunity is limited and the Federal Government cannot be held liable to pay money damages for failure to comply with legal process. These regulations embody language consistent with that holding.

List of Subjects in 39 CFR Part 491

Government employees, Postal Service, Wages.

For the reasons stated, in subchapter F of chapter I of title 39, Code of Federal Regulations, part 491 is revised to read as follows:

PART 491—GARNISHMENT OF SALARIES OF EMPLOYEES OF THE POSTAL SERVICE AND THE POSTAL RATE COMMISSION

Sec.

Authority: 5 U.S.C. 5520a; 39 U.S.C. 401; E.O.12897, 59 FR 5517, 3 CFR, 1994 Comp., p. 858.

§ 491.1 Authorized Agent to receive service.

Notwithstanding the designation, in § 2.2 of this chapter, of the General Counsel as agent for the receipt of legal process against the Postal Service, the sole agent for service of garnishment process directed to the pay of Postal Service employees and employees of the Postal Rate Commission (''employees'') is the Manager, Payroll Processing Branch, 2825 Lone Oak Parkway, Eagan, MN 55121–9650 (''Authorized Agent''). The Authorized Agent shall have sole authority to receive service of legal process in the nature of garnishment (hereinafter sometimes referred to as ''process'') arising under the law of any state, territory, or possession, or the order of a court of competent jurisdiction of any state, territory, or possession (including any order for child support and alimony or bankruptcy). The Authorized Agent may not receive or transmit service of process in a private legal matter on behalf of an employee. No process shall be effectively served until it is received by the Authorized Agent or his designee. No other employee shall have the authority to accept service of such process. Service of process in conformity with Rule 4(i) of the Federal Rules of Civil Procedure (28 U.S.C. Appendix) is not waived for any suit or action wherein the Postal Service, its officers, or employees are parties. Any Order, issued in bankruptcy, for the withholding of sums from pay due an employee and which is directed to the Postal Service for handling outside the voluntary allotment procedure, is legal process subject to the provisions of these regulations.

§ 491.2 Manner of service.

Service of process on the Authorized Agent or his designee may be made in person or by certified or registered mail, with return receipt requested, at the address of the Authorized Agent. Service may also be made on the Authorized Agent by means of any private delivery service pursuant to its authority for the private carriage of letters under an exception to the Private Express Statutes, 39 U.S.C. 601–606, provided that the private delivery organization issues a receipt bearing the name and address of both the addressee and sender, as well as the date of delivery and the signature of the receiving agent. No garnishment is effectively served until it is received by the Authorized Agent or his designee regardless of the chosen mode of delivery. Process addressed to, delivered to, or in any manner given to any employee, other than the Authorized Agent or his designee, may, at the sole discretion of the employee, be returned to the issuing court marked ''Not Effectively Served.'' A copy of or reference to these regulations may be included. Employees are not authorized to redirect or forward garnishment process to the Authorized Agent. In the event that the address of the Authorized Agent is changed, mail may be forwarded from his last published address to his new official address until such time as these regulations are amended to reflect the new address.

§ 491.3 Sufficient legal form.

No document purporting to garnish employee wages shall be deemed sufficient unless it can be determined from the face of the document that it is legal process in the nature of garnishment; that it is issued by a court of competent jurisdiction or an authorized official pursuant to an order of such a court or pursuant to federal, state or local law, evidenced by a signature of the issuing person; and that it contains the name of the garnished party, with his or her social security number, orders the employing agency to withhold from pay a specific amount of money, specifically describes the judgment of debt or administrative action complete with statutory citation and contains specific advice as to where to send the funds as they are periodically withheld including the complete Zip Code (Zip + 4). When there is a suggestion that the employee is under the jurisdiction of a bankruptcy

proceeding, the creditor must provide documentary evidence to prove that his legal process is not in violation of the bankruptcy court's jurisdiction before the creditor's garnishment may be processed. Documents deficient in any of these respects may be returned to the issuing court or authorized official inscribed ''Insufficient as to legal form.''

§ 491.4 Identification of employees.

Garnishments must be accompanied by sufficient information to permit prompt identification of the employee and the payments involved. Garnishment of an employee whose name and social security number is similar to but not identical with the name and social security number on the garnishment will not be processed. An exact match of both name and social security number is required in order to permit processing; otherwise, the garnishment will be returned marked ''Insufficient identifying information.'' Garnishments which are insufficient in regard to identifying information will not be held pending receipt of further information and must be served again when the proper information is obtained.

§ 491.5 Costs.

The Postal Service's administrative costs in executing the garnishment action shall be added to each garnishment and the costs recovered shall be retained as offsetting collections. The Postal Service reserves the right to redetermine the administrative cost of any garnishment if, in administering any garnishment, extra costs beyond those normally encountered are incurred, and add the extra cost to each garnishment. The extra costs recovered shall be retained as offsetting collections.

§ 491.6 Response to process.

(a) Within fifteen days after receipt of process that is sufficient for legal form and contains sufficient information to identify the employee, the Authorized Agent shall send written notice that garnishment process has been served, together with a copy thereof, to the affected employee at his or her duty station or last known address. The Authorized Agent shall respond, in writing, to the garnishment or interrogatories within thirty days of receipt of process. The Authorized Agent may respond within a longer period of time as may be prescribed by applicable state Law. Neither the Authorized Agent nor any employee shall be required to respond in person to any garnishment served according to the provisions of 5 U.S.C. 5520a and the regulations in this section. A sufficient response to legal process shall consist of any action of the Postal Service consistent with these regulations. The action shall be considered to be given under penalty of perjury and shall constitute a legally sufficient answer to any garnishment. The Postal Service may, in its sole discretion, answer or otherwise respond to documents purporting to be legal process which are insufficient as to the manner of service, insufficient as to the identification of the employee, insufficient as to legal form or insufficient for any other reason.

(b) The requirements of paragraph (a) of this section are illustrated by the following example:

Example: Each periodic check with the accompanying Financial Institution Statement shall be considered to be a legally sufficient answer. Where legal process has been processed but no money was deducted, (for the reason of insufficient pay, prior garnishment in force, etc.) the mailing label or other written response shall be a sufficient answer. Where the Postal Service sends a check or mailing label, no further action will be required (such as a cumulative report or notarized statement.) Documents which are defective with respect to service, lack of legal sufficiency, failure to properly identify the employee, or other reason, do not require a response or an answer but if the Postal Service chooses to act in any way, such as to return the document, that act shall be a sufficient answer.

§ 491.7 Release of information.

(a) No employee whose duties include responding to interrogatories to garnishments shall release information in response to a garnishment until it is determined that sufficient information, as required in § 491.4, has been received in writing as part of the garnishment legal process. The Authorized Agent may, at his or her sole discretion, accept or initiate telephone or telefax inquiries concerning garnishments. No other employee may release any information about employees except in conformity with the Privacy Act of 1974, 5 U.S.C. 552a, and the regulations in 39 CFR Part 266, ''Privacy of Information.''

(b) The Authorized Agent's response to legal process is sufficient if it contains only that information not otherwise protected from release by any federal statute including the Privacy Act. Neither the Postal Service nor the Postal Rate Commission shall be required to provide formal answers to interrogatories received prior to the receipt of legal process. Employment verification may be obtained by accessing the Postal Service's employment verification system by dialing 1–(800) 276–9850.

§ 491.8 Execution of process.

(a) All legal process in the nature of garnishment shall be date and time stamped by the Authorized Agent when received for the purpose of determining the order of receipt of process which is sufficient as to legal form and contains sufficient information for identification of the employee, the Authorized Agent's date and time stamp shall be conclusive evidence. Child support and alimony garnishments will be accorded priority over commercial garnishments under 5 U.S.C. 5520a as provided in 5 U.S.C. 5520a(h)(2). Garnishments shall be executed provided that the pay cycle is open for input or, if closed, will be held until the next cycle. In no event shall the Postal Service be required to vary its normal pay or disbursement cycles in order to comply with legal process of any kind. Garnishments shall be recalculated, if required, to fit within the normal postal pay cycles. The Postal Service shall not be required to withhold pay and hold the funds in escrow. The Postal Service, in its sole discretion, may process more than one garnishment at a time within the restrictions on garnishments in Section 491.9 of these regulations. The Postal Service may, in its sole discretion, accept and hold for processing garnishments received after the garnishment currently in force.

(b) The Postal Service will only accept and effectuate legal process for a person who is currently employed. Upon cessation of employment, process relating to that individual will be terminated and not retained. The Postal Service shall not be required to establish an escrow account to comply with legal process even if the applicable law of the jurisdiction requires private employers to do so. Legal process must state on its face that the Postal Service withhold up to a specific total amount of money, the Postal Service will not calculate interest, charges, or any variable in processing a garnishment. The Postal Service may continue processing a garnishment if the garnishing attorney provides the adjusted total including the additional money owed, as determined from his calculation of the variable amounts. The attorney is deemed to certify on his professional responsibility that the calculations are correct and will indemnify the employee directly for any errors. All garnishments of periodic pay may be effectuated in accordance with the bi-weekly pay schedule. The Postal Service need not vary its pay and disbursement cycles to accommodate withholding on any other cycle.

(c) Neither the Postal Service, the Postal Rate Commission nor any

disbursing officer shall be liable for any payment made from moneys due from, or payable by the Postal Service or the Postal Rate Commission to any individual pursuant to legal process regular on its face.

(d) The Postal Service, the Postal Rate Commission, any disbursing officer or any other employee shall not be liable to pay money damages for failure to comply with legal process.

§ 491.9 Restrictions on garnishment.

Garnishments under this section shall be subject to the restrictions in 15 U.S.C. 1671–1677, including limits on the amounts which can be withheld from an employee's pay and the priority of garnishments.

Stanley F. Mires,

Chief Counsel, Legislative Division.

[FR Doc. 98–32311 Filed 12–4–98; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NH–7162a; A–1–FRL–6196–1]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; 15 Percent Rate-of-Progress and Contingency Plans; Vapor Recovery Controls for Gasoline Distribution and Dispensing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions submitted by the State of New Hampshire. These revisions establish 15 percent rate-of-progress (ROP) and contingency plans for ozone nonattainment areas in the State. The revisions also include regulations adopted by New Hampshire to control volatile organic compound (VOC) emissions from gasoline dispensing facilities and from gasoline tank trucks. The intended effect of this action is to approve these plans and regulations as revisions to the State's SIP. This action is being taken in accordance with the Clean Air Act.

EFFECTIVE DATE: This rule is effective on January 6, 1999.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA; and the Air Resources Division, Department of Environmental Services, 64 North Main Street, Caller Box 2033, Concord, NH 03302–2033.

FOR FURTHER INFORMATION CONTACT: Robert McConnell, (617) 565–9266.

SUPPLEMENTARY INFORMATION: Section 182(b)(1) of the Act requires ozone nonattainment areas classified as moderate or above to develop plans to reduce volatile organic compounds (VOC) emissions by 15 percent from 1990 baseline levels. There are two serious ozone nonattainment areas in New Hampshire. The areas are referred to as the Portsmouth-Dover-Rochester area (the ''Por-Dov-Roc area''), and the New Hampshire portion of the Boston-Lawrence-Worcester area (the ''Bos-Law-Wor area). New Hampshire is, therefore, subject to the 15 percent ROP requirement.

I. Background

On October 27, 1997 (62 FR 55544), EPA published a Notice of Proposed Rulemaking (NPR) for the State of New Hampshire. The NPR proposed approval of the State's 15 percent ROP and contingency plans. The formal SIP revision was submitted by New Hampshire on August 29, 1996.

The proposed approval of New Hampshire's 15 percent ROP and contingency plans which was published in the October 27, 1997 **Federal Register** (62 FR 55544), stated that EPA accepted the level of emission reductions projected to occur from the State's VOC RACT rules, Stage I rule, and Stage II rule. EPA's proposed rulemaking noted that although the State had submitted these rules to EPA, they had not been approved by EPA as of October 27, 1997. On March 10, 1998 (63 FR 11600), EPA approved the New Hampshire VOC RACT rules into the State's SIP. On September 21, 1998 (63 FR 50180), EPA proposed approval of New Hampshire's Part Env–A 1205 ''Volatile Organic Compounds (VOC): Gasoline Dispensing Facilities and Gasoline Tank Trucks.'' This regulation contains the State's Stage I and Stage II vapor recovery control requirements. Today's action also includes a final approval of New Hampshire's Part Env–A 1205.

Transportation Conformity Budgets

Under EPA's transportation conformity rule the 15 percent plans are a control strategy SIP. The plans for New Hampshire establish VOC emission budgets for on-road mobile sources within the respective nonattainment areas. These plans do not establish NO_X emission budgets for on-road mobile sources. However, New Hampshire submitted an ozone attainment demonstration SIP revision to EPA on June 30, 1998. The ozone attainment demonstration establishes the VOC and NO_X emission budgets for 2003 shown in Table 1.

TABLE 1.—2003 EMISSION BUDGETS FOR ON-ROAD MOBILE SOURCES

Nonattainment area	VOC Budget tons per summer day	NO_X Budget tons per summer day
NH portion of Bos-Law-Wor area	10.72	21.37
Por-Dov-Roc area	6.97	13.68

By letter dated August 19, 1998, EPA informed New Hampshire that the motor vehicle budgets contained within the State's ozone attainment demonstration were adequate for conformity purposes. EPA believes that the VOC and NO_X budgets established by the New Hampshire ozone attainment demonstration are currently the controlling budgets for conformity determinations for 2003 and later years. The budgets in the attainment demonstration specifically address anticipated mobile source emissions in 2003, whereas the 15 percent plan establishes a budget for 1996. The time period for the budget in the 15 percent plans has passed. Additionally, the attainment demonstration establishes a more stringent budget.

EPA's rationale for granting approval to these plans, and the details of New Hampshire's submittal are contained in the NPR and the accompanying technical support document and will not be restated here.

II. Public Comments

No comments were received on the October 27, 1997 NPR regarding EPA's proposed action on the New Hampshire 15 percent ROP and contingency plans, or on the September 21, 1998 NPR regarding the State's Gasoline Dispensing Facilities and Gasoline Tank Trucks regulation.

III. Final Action

EPA is approving the New Hampshire 15 percent ROP and contingency plans as revisions to the State's SIP. EPA is also approving New Hampshire's Part Env–A 1205 ''Volatile Organic Compounds (VOC): Gasoline Dispensing Facilities and Gasoline Tank Trucks'' into the New Hampshire SIP.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future

request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Orders 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

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

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not an ''economically significant'' action under Executive Order 12866.

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, 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. 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

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

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new 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 February 5, 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).) EPA encourages interested parties to comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone.

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

Dated: November 19, 1998.

John P. DeVillars,

Regional Administrator, Region I.

Part 52 of 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 EE—New Hampshire

2. Section 52.1520 is amended by adding paragraphs (c)(53) and (c)(58) to read as follows:

§ 52.1520 Identification of plan.

* * * * *

(c) * * *

(53) Revisions to the State Implementation Plan submitted by the New Hampshire Air Resources Division on August 29, 1996. This revision is for the purpose of satisfying the rate-of-progress requirement of section 182(b) and the contingency measure requirement of section 172(c)(9) of the Clean Air Act, for the Portsmouth-Dover-Rochester serious ozone nonattainment area, and the New Hampshire portion of the Boston-Lawrence-Worcester serious ozone nonattainment area.

(i) Incorporation by reference.

(A) Letter from the New Hampshire Air Resources Division dated August 29, 1996 submitting a revision to the New Hampshire State Implementation Plan.

* * * * *

(58) Revisions to the State Implementation Plan submitted by the New Hampshire Air Resources Division on November 25, 1992.

(i) Incorporation by reference.

(A) Letter from the New Hampshire Air Resources Division dated November 24, 1992 submitting a revision to the New Hampshire State Implementation Plan.

(B) Part Env–A 1205 ''Volatile Organic Compounds (VOC): Gasoline Dispensing Facilities and Gasoline Tank Trucks,'' effective in the State of New Hampshire on August 17, 1992.

(ii) Additional materials.

(A) New Hampshire Department of Environmental Services ''Stage II Equivalency Demonstration,'' dated November 1992.

(B) Nonregulatory portions of the submittal.

[FR Doc. 98–32421 Filed 12–4–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE100–2014 & DC100–1017; FRL–6193–6]

Approval and Promulgation of Air Quality Implementation Plans; Delaware and District of Columbia; Revised Format for Materials Being Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: EPA is revising the format of 40 CFR part 52 for materials submitted by Delaware and the District of Columbia that are incorporated by reference (IBR) into their respective State implementation plans (SIPs). The regulations affected by this format change have all been previously submitted by the respective State agency and approved by EPA. This format revision will primarily affect the ''Identification of plan'' sections of CFR part 52, as well as the format of the SIP materials that will be available for public inspection at the Office of the Federal Register (OFR), the Air and Radiation Docket and Information Center located in Waterside Mall, Washington, D.C., and the Regional Office. The sections of 40 CFR part 52 pertaining to provisions promulgated by EPA or State-submitted materials not subject to IBR review remain unchanged.

EFFECTIVE DATE: This final rule is effective on December 7, 1998.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903; and the District of Columbia Department of Public Health, Air Quality Division, 2100 Martin Luther King Ave, S.E., Washington, DC 20020.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 566–2108 or by e-mail at frankford.harold@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The supplementary information is organized in the following order:

* * * * *

What a SIP Is

Each state has a SIP containing the control measures and strategies used to attain and maintain the national ambient air quality standards (NAAQS). The SIP is extensive, containing such elements as air pollution control regulations, emission inventories, monitoring network, attainment demonstrations, and enforcement mechanisms.

How EPA Enforces SIPs

Each state must formally adopt the control measures and strategies in the SIP after the public has had an opportunity to comment on them. They are then submitted to EPA as SIP revisions on which EPA must formally act.

Once these control measures and strategies are approved by EPA, after notice and comment, they are incorporated into the Federally approved SIP and are identified in Part 52 (Approval and Promulgation of Implementation Plans), title 40 of the Code of Federal Regulations (40 CFR Part 52). The actual state regulations approved by EPA are not reproduced in their entirety in 40 CFR Part 52, but are ''incorporated by reference'' which means that EPA has approved a given state regulation with a specific effective date. This format allows both EPA and the public to know which measures are contained in a given SIP and ensures that the state is enforcing the regulations. It also allows EPA and the public to take enforcement action, should a state not enforce its SIP-approved regulations.

How the State and EPA Updates the SIP

The SIP is a living document which the state can revise as necessary to address the unique air pollution problems in the state. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference Federally-approved SIPs, as a result of consultations between EPA and OFR.

EPA began the process of developing: (1) a revised SIP document for each state that would be IBR under the provisions of 1 CFR Part 51; (2) a revised mechanism for announcing EPA approval of revisions to an applicable SIP and updating both the IBR document and the CFR; and (3) a revised format of the ''Identification of Plan'' sections for each applicable subpart to reflect these revised IBR procedures. The description of the revised SIP document, IBR procedures, and ''Identification of Plan'' format are discussed in further detail in the May 22, 1997, **Federal Register** document.

How EPA Compiles the SIPs

The Federally-approved regulations, source-specific permits, and nonregulatory provisions (entirely or portions of) submitted by each state agency have been compiled by EPA into a ''SIP compilation.'' The SIP compilation contains the updated regulations, source-specific permits, and nonregulatory provisions approved by EPA through previous rulemaking actions in the **Federal Register**. The compilations are contained in three-ring binders and will be updated, primarily on an annual basis.

How EPA Organizes the SIP Compilation

Each compilation contains three parts. Part one contains the regulations, part two contains the source-specific requirements that have been approved as part of the SIP and part three contains nonregulatory provisions that have been EPA approved. Each part consists of a table of identifying information for each SIP-approved regulation, each SIP-approved source-specific permit, and each nonregulatory SIP provision. In this action, EPA is publishing the tables summarizing Parts one and two for each State. The table of identifying information in the compilation corresponds to the table of contents published in 40 CFR Part 52 for these states. EPA will publish the summary list of Part Three SIP provisions for Delaware and the District of Columbia in a separate action. EPA Regional Offices have the primary responsibility for ensuring accuracy and updating the compilations.

Where You Can Find a Copy of the SIP Compilation

EPA Region III developed and will maintain the compilation for Delaware and the District of Columbia. A copy of the full text of each state's regulatory and source-specific SIP compilation will also be maintained at the OFR and EPA's Air Docket and Information Center.

The Format of the New Identification of Plan Section

In order to better serve the public, EPA revised the organization of the ''Identification of Plan'' section and included additional information to clarify the enforceable elements of the SIP. The revised Identification of Plan section contains five subsections:

1. Purpose and scope
2. Incorporation by reference
3. EPA-approved regulations
4. EPA-approved source-specific permits
5. EPA-approved nonregulatory provisions such as transportation control measures, statutory provisions, control strategies, monitoring networks, etc.

When a SIP Revision Becomes Federally Enforceable

All revisions to the applicable SIP become Federally enforceable as of the effective date of the revisions to paragraphs (c), (d), or (e) of the applicable Identification of Plan section found in each subpart of 40 CFR Part 52.

The Historical Record of SIP Revision Approvals

To facilitate enforcement of previously approved SIP provisions and provide a smooth transition to the new SIP processing system, EPA retains the original Identification of Plan section, previously appearing in the CFR as the first or second section of Part 52 for each state subpart. After an initial two-year period, EPA will review its experience with the new system and enforceability of previously approved SIP measures and will decide whether or not to retain the Identification of Plan appendices for some further period.

What EPA Is Doing in This Action

Today's rule constitutes a ''housekeeping'' exercise to ensure that all revisions to the state programs that have occurred are accurately reflected in 40 CFR Part 52. State SIP revisions are controlled by EPA regulations at 40 CFR Part 51. When EPA receives a formal SIP revision request, the Agency must publish the proposed revision in the **Federal Register** and provide for public comment before approval.

EPA has determined that today's rule falls under the ''good cause'' exemption in Section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation and Section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved state programs.

Under Section 553 of the APA, an agency may find good cause where procedures are ''impractical, unnecessary, or contrary to the public interest.'' Public comment is ''unnecessary'' and ''contrary to the public interest'' since the codification only reflects existing law. Immediate notice in the CFR benefits the public by removing outdated citations.

How This Document Complies With the Federal Administrative Requirements for Rulemaking

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under 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 EPA complies by consulting, E.O. 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that EPA determines (1) is ''economically significant,'' as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has 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 Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

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 EPA complies by consulting, E.O. 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 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 a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

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

EPA has also determined that the provisions of section 307(b)(1) of the Clean Air Act pertaining to petitions for

judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the Delaware and District of Columbia SIP compilations had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review for these ''Identification of plan'' reorganization actions for Delaware and the District of Columbia.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: November 17, 1998.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

40 CFR part 52 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 I—Delaware

2. Section 52.420 is redesignated as § 52.465 and the section heading and paragraph (a) are revised to read as follows:

§ 52.465 Original identification of plan section.

This section identifies the original ''Air Implementation Plan for the State of Delaware'' and all revisions submitted by Delaware that were federally approved prior to July 1, 1998.

* * * * *

3. A new § 52.420 is added to read as follows:

§ 52.420 Identification of plan.

(a) Purpose and scope. This section sets forth the applicable State implementation plan for Delaware under section 110 of the Clean Air Act, 42 U.S.C. 7410, and 40 CFR part 51 to meet national ambient air quality standards.

(b) Incorporation by reference.

(1) Material listed in paragraphs (c) and (d) of this section with an EPA approval date prior to July 1, 1998 was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates after July 1, 1998, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 3 certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State implementation plan as of July 1, 1998.

(3) Copies of the materials incorporated by reference may be inspected at the Region 3 EPA Office at 1650 Arch Street, Philadelphia, PA 19103; the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.; or at EPA, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW., Washington, DC. 20460.

(c) EPA approved regulations.

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP

State citation	Title subject	State effective date	EPA approval date	Comments
Regulation 1—Definitions and Administrative Principles				
Section 1	General Provisions	5/28/74	03/23/76 41 FR 12010.	
Section 2	Definitions	2/8/95	2/28/96 61 FR 7415	Some terms not in SIP due to subject matter.
Section 3	Administrative Principles	1/7/72	05/31/72 37 FR 10842.	
Section 4	Abbreviations	2/1/81	3/15/82 48 FR 11013	Abbreviation of ''CAA'' only.
Regulation 2—Permits				
Section 1	General Provisions	10/8/82	1/26/83 48 FR 3598.	
Section 2	Construction, Installation, Alteration and Operation Permits	1/31/90	6/29/90 55 FR 26689	Section 2.1.h is not in the SIP.
Section 3	Exemptions	3/6/90	1/27/93 58 FR 40065.	
Section 4	Applications Prepared by Interested Parties	7/17/84	7/2/85 50 FR 27244.	
Section 5	Cancellation of Permits	10/8/82	1/26/83 48 FR 3598.	
Section 6	Action on Applications	10/8/82	1/26/83 48 FR 3598.	
Section 7	Suspension or Revocation of Operating Permits	7/17/84	7/2/85 50 FR 27244.	
Section 8	Transfer of Permit Prohibited	7/17/84	7/2/85 50 FR 27244.	
Section 9	Availability of Permits	7/17/84	7/2/85 50 FR 27244.	

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP—Continued

State citation	Title subject	State effective date	EPA approval date	Comments
Regulation 3—Ambient Air Quality Standards				
Section 1	General Provisions	03/29/88	4/6/94 48 FR 46986.	
Section 2	General Restrictions	3/11/80	10/30/81 46 FR 53663.	
Section 3	Suspended Particulates	3/11/80	10/30/81 46 FR 53663.	
Section 4	Sulfur Dioxide	3/11/80	10/30/81 46 FR 53663.	
Section 5	Carbon Monoxide	3/11/80	10/30/81 46 FR 53663.	
Section 6	Ozone	3/11/80	10/30/81 46 FR 53663.	
Section 8	Nitrogen Dioxide	3/11/80	10/30/81 46 FR 53663.	
Section 10	Lead	3/11/80	3/11/82 48 FR 10535.	
Section 11	PM_{10} Particulates	12/7/88	4/6/94 48 FR 46986.	
Regulation 4—Particulate Emissions From Fuel Burning Equipment				
Section 1	General Provisions	5/28/74	41 FR 12010.	
Section 2	Emission Limits	5/28/74	41 FR 12010.	
Regulation 5—Particulate Emissions From Industrial Process Operations				
Section 1	General Provisions	5/28/74	3/23/76 41 FR 12010.	
Section 2	General Restrictions	5/28/74	3/23/76 41 FR 12010.	
Section 3	Restrictions on Hot Mix Asphalt Batching Operations	5/28/74	3/23/76 41 FR 12010.	
Section 4	Restrictions on Secondary Metal Operations	12/2/77	07/30/79 44 FR 44497.	
Section 5	Restrictions on Petroleum Refining Operations	9/26/78	08/01/80 45 FR 51198	SIP-approved process weight rate unit (see Table 4) is ''Barrels Per Day''.
Section 6	Restrictions on Prill Tower Operations	9/26/78	08/01/80 45 FR 51198.	
Section 7	Control of Potentially Hazardous Particulate Matter	1/7/72	5/31/72 37 FR 10842.	
Regulation 6—Particulate Emissions From Construction and Materials Handling				
Section 1	General Provisions	1/7/72	05/31/72 37 FR 10842.	
Section 2	Demolition	5/28/74	03/23/76 41 FR 12010.	
Section 3	Grading, Land Clearing, Excavation and Use of Non-Paved Roads.	5/28/74	03/23/76 41 FR 12010.	
Section 4	Material Movement	5/28/74	03/23/76 41 FR 12010.	
Section 5	Sandblasting	5/28/74	03/23/76 41 FR 12010.	
Section 6	Material Storage	5/28/74	03/23/76 41 FR 12010.	
Regulation 7—Emissions From Incineration of Noninfectious Waste				
Section 1	General Provisions	05/28/74	03/23/76 41 FR 12010.	
Section 2	Restrictions	05/28/74	03/23/76 41 FR 12010	Provisions were revised 10/13/89 by State, but not submitted to EPA as SIP revisions.

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP—Continued

State citation	Title subject	State effective date	EPA approval date	Comments
Regulation 8—Sulfur Dioxide Emissions From Fuel Burning Equipment				
Section 1	General Provisions	12/8/83	10/3/84 49 FR 39061.	
Section 2	Limit on Sulfur Content of Fuel	5/9/85	12/08/86 51 FR 44068.	
Section 3	Emissions Control in Lieu of Sulfur Content Limits of Section 2.	5/9/85	12/08/86 51 FR 44068.	
Regulation 9—Emissions of Sulfur Compounds From Industrial Operations				
Section 1	General Provisions	5/9/85	12/08/86 51 FR 44068.	
Section 2	Restrictions on Sulfuric Acid Manufacturing Operations	12/29/80	03/11/82 48 FR 10535	Section 2.1 only is in the SIP. Sections 2.2 through 2.4 are federally enforceable as a Section 111(d) plan and codified at 40 CFR 62.1875.
Section 3	Restriction on Sulfur Recovery Operations	5/28/74	03/23/76 41 FR 12010.	
Section 4	Stack Height Requirements	4/18/83	09/21/83 48 FR 42979.	
Regulation 10—Control of Sulfur Dioxide Emissions—Kent and Sussex Counties				
Section 1	Requirements for Existing Sources of Sulfur Dioxide	1/7/72	05/31/72 37 FR 10842.	
Section 2	Requirements for New Sources of Sulfur Dioxide	5/28/74	03/23/76 41 FR 12010	
Regulation 11—Carbon Monoxide Emissions From Industrial Process Operations—New Castle County				
Section 1	General Provisions	5/28/74	03/23/76 41 FR 12010	
Section 2	Restrictions on Petroleum Refining Operations	1/7/72	05/31/72 37 FR 10842	Citation revised 3/23/76 41 FR 12010.
Regulation 13—Open Burning				
Section 1	Prohibitions-All Counties	2/8/95	03/12/97 62 FR 11329	EPA effective date is 5/1/98.
Section 2	Prohibitions-Specific Counties	2/8/95	03/12/97 62 FR 11329	EPA effective date is 5/1/98.
Section 3	General Restrictions-All Counties	2/8/95	03/12/97 62 FR 11329	EPA effective date is 5/1/98.
Section 4	Exemptions-All Counties	2/8/95	03/12/97 62 FR 11329	EPA effective date is 5/1/98.
Regulation 14—Visible Emissions				
Section 1	General Provisions	7/17/84	07/02/85 50 FR 27244	
Section 2	Requirements	7/17/84	07/02/85 50 FR 27244	
Section 3	Alternate Opacity Requirements	7/17/84	07/02/85 50 FR 27244	
Section 4	Compliance with Opacity Standards	7/17/84	07/02/85 50 FR 27244	
Regulation 15—Air Pollution Alert and Emergency Plan				
Section 1	General Provisions	1/7/72	05/31/72 37 FR 10842	
Section 2	Stages and Criteria	3/29/88	04/06/94 59 FR 16140	

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP—Continued

State citation	Title subject	State effective date	EPA approval date	Comments
Section 3	Required Actions	1/7/72	05/31/72 37 FR 10842	Delaware removed the word ''standby'' from Table III, Section 3B effective 5/28/74, but did not submit as a SIP revision.
Section 4	Standby Plans	1/7/72	05/31/72 37 FR 10842	
Regulation 16—Sources Having an Interstate Air Pollution Potential				
Section 1	General Provisions	1/7/72	05/31/72 37 FR 10842	Delaware revised provision effective 5/28/74, but did not submit as a SIP revision.
Section 2	Limitations	1/7/72	05/31/72 37 FR 10842	
Section 3	Requirements	1/7/72	05/31/72 37 FR 10842	
Regulation 17—Source Monitoring, Record-Keeping and Reporting				
Section 1	Definitions and Administrative Principles	1/11/93	02/28/96 61 FR 7453	
Section 2	Sampling and Monitoring	7/17/84	07/02/85 50 FR 27244	Former SIP Sections 1 through 5 respectively; citation revised 2/28/96, 62 FR 7453. **Note:** Delaware revised Sections 4 and 6 effective 1/11/93, but did not submit as a SIP revision.
Section 3	Minimum Emission Monitoring Requirements for Existing Sources.	1/10/77	8/25/81 46 FR 43150.	
Section 4	Performance Specifications	1/10/77	8/25/81 46 FR 43150.	
Section 5	Minimum Data Requirements	1/10/77	8/25/81 46 FR 43150.	
Section 6	Data Reduction	1/10/77	8/25/81 46 FR 43150.	
Section 7	Emission Statement	1/11/93	02/28/96 61 FR 7453.	
Regulation 23—Standards of Performance for Steel Plants: Electric Arc Furnaces				
Section 1	Applicability	12/2/77	07/30/79 44 FR 44497	Correction published 8/20/80, 45 FR 55422.
Section 2	Definitions	04/18/83	09/21/83 49 FR 39061.	
Section 3	Standard for Particulate Matter	04/18/83	09/21/83 49 FR 39061.	
Section 4	Monitoring of Operations	12/2/77	07/30/79 44 FR 44497	Correction published 8/20/80, 45 FR 55422.
Section 5	Test Methods and Procedures	12/2/77	07/30/79 44 FR 44497	Correction published 8/20/80, 45 FR 55422.
Regulation 24—Control of Volatile Organic Compound Emissions				
Section 1	General Provisions	1/11/93	5/3/95 60 FR 21707.	
Section 2	Definitions	11/29/94	01/26/96 61 FR 2419.	
Section 3	Applicability	1/11/93	5/3/95 60 FR 21707.	
Section 4	Compliance Certification, Recordkeeping, and Reporting Requirements for Coating Sources.	11/29/94	01/26/96 61 FR 2419.	
Section 5	Compliance Certification, Recordkeeping, and Reporting Requirements for Non-Coating Sources.	1/11/93	5/3/95 60 FR 21707.	

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP—Continued

State citation	Title subject	State effective date	EPA approval date	Comments
Section 6	General Recordkeeping	1/11/93	5/3/95 60 FR 21707.	
Section 7	Circumvention	1/11/93	5/3/95 60 FR 21707.	
Section 8	Handling, Storage, and Disposal of Volatile Organic Compounds (VOCs).	11/29/94	01/26/96 61 FR 2419.	
Section 9	Compliance, Permits, Enforceability	1/11/93	5/3/95 60 FR 21707.	
Section 10	Aerospace Coatings	11/29/94	01/26/96 61 FR 2419.	
Section 11	Motor Vehicle Refinishing	11/29/94	01/26/96 61 FR 2419.	
Section 12	Surface Coating of Plastic Parts	11/29/94	01/26/96 61 FR 2419.	
Section 13	Automobile and Light-Duty Truck Coating Operations	1/11/93	5/3/95 60 FR 21707.	
Section 14	Can Coating	1/11/93	5/3/95 60 FR 21707.	
Section 15	Coil Coating	1/11/93	5/3/95 60 FR 21707.	
Section 16	Paper Coating	1/11/93	5/3/95 60 FR 21707.	
Section 17	Fabric Coating	1/11/93	5/3/95 60 FR 21707.	
Section 18	Vinyl Coating	1/11/93	5/3/95 60 FR 21707.	
Section 19	Coating of Metal Furniture	1/11/93	5/3/95 60 FR 21707.	
Section 20	Coating of Large Appliances	1/11/93	5/3/95 60 FR 21707.	
Section 21	Coating of Magnet Wire	11/29/94	01/26/96 61 FR 2419.	
Section 22	Coating of Miscellaneous Metal Parts	1/11/93	5/3/95 60 FR 21707.	
Section 23	Coating of Flat Wood Panelling	1/11/93	5/3/95 60 FR 21707.	
Section 24	Bulk Gasoline Plants	1/11/93	5/3/95 60 FR 21707.	
Section 25	Bulk Gasoline Terminals	11/29/94	01/26/96 61 FR 2419.	
Section 26	Gasoline Dispensing Facility—Stage I Vapor Recovery	1/11/93	5/3/95 60 FR 21707.	
Section 27	Gasoline Tank Trucks	1/11/93	5/3/95 60 FR 21707.	
Section 28	Petroleum Refinery Sources	1/11/93	5/3/95 60 FR 21707.	
Section 29	Leaks from Petroleum Refinery Equipment	11/29/94	01/26/96 61 FR 2419.	
Section 30	Petroleum Liquid Storage in External Floating Roof Tanks	11/29/94	01/26/96 61 FR 2419.	
Section 31	Petroleum Liquid Storage in Fixed Roof Tanks	11/29/94	01/26/96 61 FR 2419.	
Section 32	Leaks from Natural Gas/Gasoline Processing Equipment	11/29/94	01/26/96 61 FR 2419.	
Section 33	Solvent Metal Cleaning	11/29/94	01/26/96 61 FR 2419.	
Section 34	Cutback and Emulsified Asphalt	1/11/93	5/3/95 60 FR 21707.	
Section 35	Manufacture of Synthesized Pharmaceutical Products	11/29/94	01/26/96 61 FR 2419.	
Section 36	Stage II Vapor Recovery	1/11/93	6/10/94 59 FR 29956.	
Section 37	Graphic Arts Systems	11/29/94	01/26/96 61 FR 2419.	
Section 38	Petroleum Solvent Dry Cleaners	1/11/93	5/3/95 60 FR 21707.	
Section 39	Perchloroethylene Dry Cleaning	1/11/93	5/3/95 60 FR 21707.	
Section 40	Leaks from Synthetic Organic Chemical, Polymer, and Resin Manufacturing Equipment.	1/11/93	5/3/95 60 FR 21707.	

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP—Continued

State citation	Title subject	State effective date	EPA approval date	Comments
Section 41	Manufacture of High-Density Polyethylene, Polypropylene and Polystyrene Resins.	1/11/93	5/3/95 60 FR 21707.	
Section 42	Air Oxidation Processes in the Synthetic Organic Chemical Manufacturing Industry.	1/11/93	5/3/95 60 FR 21707.	
Section 43	Bulk Gasoline Marine Tank Vessel Loading Facilities	11/29/94	01/26/96 61 FR 2419.	
Section 44	Batch Processing Operations	11/29/94	01/26/96 61 FR 2419.	
Section 45	Industrial Cleaning Solvents	11/29/940	1/26/96 61 FR 2419.	
Section 47	Offset Lithographic Printing	11/29/94	05/14/97 62 FR 26399.	
Section 48	Reactor Processes and Distillation Operations in the Synthetic Organic Chemical Manufacturing Industry.	11/29/94	01/26/96 61 FR 2419.	
Section 49	Control of Volatile Organic Compound Emissions from Volatile Organic Liquid Storage Vessels.	11/29/94	01/26/96 61 FR 2419.	
Section 50	Other Facilities that Emit Volatile Organic Compounds (VOCs).	11/29/94	03/12/97 62 FR 11329	EPA effective date for Sections 50(a)(5) and 50(b)(3) is 5/1/98
Appendix ''A''	Test Methods and Compliance Procedures: General Provisions.	11/29/94	01/26/96 61 FR 2419.	
Appendix ''B''	Test Methods and Compliance Procedures: Determining the Volatile Organic Compound (VOC) Content of Coatings and Inks.	1/11/93	5/3/95 60 FR 21707.	
Appendix ''C''	Test Methods and Compliance Procedures: Alternative Compliance Methods for Surface Coating.	1/11/93	5/3/95 60 FR 21707.	
Appendix ''D''	Test Methods and Compliance Procedures: Emission Capture and Destruction or Removal Efficiency and Monitoring Requirements.	11/29/94	01/26/96 61 FR 2419.	
Appendix ''E''	Test Methods and Compliance Procedures: Determining the Destruction or Removal Efficiency of a Control Device.	1/11/93	5/3/95 60 FR 21707.	
Appendix ''F''	Test Methods and Compliance Procedures: Leak Detection Methods for Volatile Organic Compounds (VOCs).	1/11/93	5/3/95 60 FR 21707	
Appendix ''G''	Performance Specifications for Continuous Emissions Monitoring of Total Hydrocarbons.	1/11/93	5/3/95 60 FR 21707	
Appendix ''H''	Quality Control Procedures for Continuous Emission Monitoring Systems (CEMS).	1/11/93	5/3/95 60 FR 21707	
Appendix ''I''	Method to Determine Length of Rolling Period for Liquid-Liquid Material Balance Method.	11/29/94	01/26/96 61 FR 2419	
Appendix ''J''	Procedures for Implementation of Regulations Covering Stage II Vapor Recovery Systems for Gasoline Dispensing Facilities.	1/11/93	6/10/94 59 FR 29956	
Appendix ''J1''	Certified Stage II Vapor Recovery Systems	1/11/93	6/10/94 59 FR 29956	
Appendix ''J2''	Pressure Decay/Leak Test Procedure for Verification of Proper Functioning of Stage I & Stage II Vapor Recovery Equipment.	1/11/93	6/10/94 59 FR 29956	
Appendix ''J3''	Dynamic Backpressure (Dry) Test and Liquid Blockage (Wet) Test Procedure for Verification of Proper Functioning of Stage II Vapor Balance Recovery Systems.	1/11/93	6/10/94 59 FR 29956	
Appendix ''K''	Emission Estimation Methodologies	11/29/94	01/26/96 61 FR 2419	
Appendix ''L''	Method to Determine Total Organic Carbon for Offset Lithographic Solutions.	11/29/94	01/26/96 61 FR 2419	
Appendix ''M''	Test Method for Determining the Performance of Alternative Cleaning Fluids.	11/29/94	01/26/96 61 FR 2419	
Regulation 25—Requirements for Preconstruction Review				
Section 1	General Provisions	5/15/90	01/27/93 58 FR 26689	
Section 2	Emission Offset Provisions	7/6/82	10/17/83 48 FR 46986	
Section 3	Prevention of Significant Deterioration of Air Quality	5/15/90	01/27/93 58 FR 26689	

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP—Continued

State citation	Title subject	State effective date	EPA approval date	Comments
Regulation 26—Motor Vehicle Emissions Inspection Program				
Section 1	Applicability and Definitions	4/1/90	01/06/92 57 FR 351	Revised Regulation 26 submitted 2/17/95, and conditionally approved by EPA on May 19, 1997, 62 FR 27195, at §52.424(b).
Section 2	General Provisions	4/1/90	01/06/92 57 FR 351.	
Section 3	Registration Requirement	5/9/85	12/08/86 51 FR 44068.	
Section 4	Exemptions	4/1/90	01/06/92 57 FR 351.	
Section 5	Enforcement	7/6/82	10/17/83 48 FR 46986.	
Section 6	Compliance, Waivers, Extensions of Time, and Repairs	4/1/90	01/06/92 57 FR 351.	
Section 7	Inspection Facility Requirements	7/6/82	10/17/83 48 FR 46986.	
Section 8	Certification of Motor Vehicle Officers	7/6/82	10/17/83 48 FR 46986.	
Section 9	Calibration and Test Procedures and Approved Equipment	7/6/82	10/17/83 48 FR 46986.	
Technical Memorandum 1.	Motor Vehicle Inspection, and Maintenance Program, Vehicle Test Procedure and Machine Calibration.	4/1/90	01/06/92 57 FR 351.	
Technical Memorandum 2.	Motor Vehicle Inspection and Maintenance Program Emission Limit.	4/1/90	01/06/92 57 FR 351.	
Regulation 27—Stack Heights				
Section 1	General Provisions	4/18/83	09/21/83 48 FR 42979.	
Section 2	Definitions Specific to this Regulation	12/7/88	06/29/90 55 FR 26689.	
Section 3	Requirements for Existing and New Sources	2/18/87	06/29/90 55 FR 26689.	
Section 4	Public Notification	2/18/87	06/29/90 55 FR 26689.	
Regulation 35—General Conformity				
Section 1	Purpose	8/14/96	07/15/97 62 FR 37722.	
Section 2	Definitions	8/14/96	07/15/97 62 FR 37722.	
Section 3	Applicability	8/14/96	07/15/97 62 FR 37722.	
Section 4	Conformity Analysis	8/14/96	07/15/97 62 FR 37722.	
Section 5	Reporting Requirements	8/14/96	07/15/97 62 FR 37722.	
Section 6	Public Participation and Consultation	8/14/96	07/15/97 62 FR 37722.	
Section 7	Frequency of Conformity Determinations	8/14/96	07/15/97 62 FR 37722.	
Section 8	Criteria for Determining Conformity of General Federal Actions.	8/14/96	07/15/97 62 FR 37722.	
Section 9	Procedures for Conformity Determinations of General Federal Actions.	8/14/96	07/15/97 62 FR 37722.	
Section 10	Mitigation of Air Quality Impacts	8/14/96	07/15/97 62 FR 37722.	
Section 11	Savings Provision	8/14/96	07/15/97 62 FR 37722.	

(d) EPA approved State Source specific requirements.

EPA-APPROVED DELAWARE SOURCE-SPECIFIC PERMITS

Name of source	Permit number	State effective date	EPA approval date	Comments
Getty Oil Co	75–A–4	8/5/75	3/7/79 44 FR 12423	§ 52.420(c)(11).
Phoenix Steel Co.-Electric Arc Furnaces Charging & Tapping #2.	77–A–8	12/2/77	7/30/79 44 FR 25223	§ 52.420(c)(12).
Delmarva Power & Light—Indian River	89–A–7/APC 89/197	2/15/89	1/22/90 55 FR 2067	§ 52.420(c)(38).

(e) (Reserved)

Subpart J—District of Columbia

4. Section 52.470 is redesignated as § 52.515 and the heading and paragraph (a) are revised to read as follows:

§ 52.515 Original identification of plan section.

(a) This section identifies the original ''Air Implementation Plan for the District of Columbia'' and all revisions submitted by the District of Columbia that were federally approved prior to July 1, 1998.

* * * * *

5. A new § 52.470 is added to read as follows:

§ 52.470 Identification of plan.

(a) Purpose and scope. This section sets forth the applicable State implementation plan for the District of Columbia under section 110 of the Clean Air Act (42 U.S.C. 7401) and 40 CFR part 51 to meet national ambient air quality standards.

(b) Incorporation by reference.

(1) Material listed in paragraphs (c) and (d) of this section with an EPA approval date prior to July 1, 1998 was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates after July 1, 1998, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 3 certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State implementation plan as of July 1, 1998.

(3) Copies of the materials incorporated by reference may be inspected at the Region 3 EPA Office at 1650 Arch Street, Philadelphia, PA 19103; the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC; or at EPA, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW., Washington, DC 20460.

(c) EPA approved regulations.

EPA-APPROVED DISTRICT OF COLUMBIA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Comments
	Chapter 1—General			
Section 100	Purpose, Scope and Construction	3/15/85	8/28/95 60 FR 44431.	
Section 101	Inspection	3/15/85	8/28/95 60 FR 44431.	
Section 102	Orders for Compliance	3/15/85	8/28/95 60 FR 44431.	
Section 104	Hearings	3/15/85	8/28/95 60 FR 44431.	
Section 105	Penalty	3/15/85	8/28/95 60 FR 44431.	
Section 106	Confidentiality of Reports	3/15/85	8/28/95 60 FR 44431.	
Section 107	Control Devices or Practices	3/15/85	8/28/95 60 FR 44431.	
Section 199	Definitions and Abbreviations	4/29/97	7/31/97 .	
Section 8–2: 702	Definitions; definition of ''stack''	7/7/72	9/22/72 37 FR 19806.	
Section 8–2: 724	Variances	7/7/72	9/22/72 37 FR 19806.	
	Chapter 2—General and Non-Attainment Area Permits			
Section 200	General Permit Requirements	4/29/97	7/31/97 62 FR 40937.	
Section 201	General Requirements for Permit Issuance	4/29/97	7/31/97 62 FR 40937.	

EPA-APPROVED DISTRICT OF COLUMBIA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Comments
Section 202	Modification, Revocation and Termination of Permits.	4/29/97	7/31/97 62 FR 40937.	
Section 204	Requirements for Sources Affecting Nonattainment Areas.	4/29/97	7/31/97 62 FR 40937.	
Section 206	Notice and Comment Prior To Permit Issuance	4/29/97	7/31/97 62 FR 40937.	
Section 299	Definitions and Abbreviations	4/29/97	7/31/97 62 FR 40937.	
Section 8–2: 720	Permits to Construct or Modify; Permits to Operate.	7/7/72	9/22/72 37 FR 19806.	Paragraphs (c) through (i), as they apply to operating permits for sources not subject to the provisions of Section 204.
Chapter 4—Ambient Monitoring and Emergency Procedures				
Section 400	Air Pollution Monitoring	3/15/85	8/28/95 60 FR 44431.	
Section 401	Emergency Procedures	3/15/85	8/28/95 60 FR 44431.	
Section 499	Definitions and Abbreviations	3/15/85	8/28/95 60 FR 44431.	
Chapter 5—Source Monitoring and Testing				
Sections 500.1 through 500.3	Records, Reports and Monitoring Devices	3/15/85	8/28/95 60 FR 44431.	
Sections 500.4, 500.5	Records, Reports, and Monitoring Devices	9/30/93	1/26/95 60 FR 5134.	
Section 500.7	Emission Statements	9/30/93	5/26/95 60 FR 27944.	
Section 501	Monitoring Devices	3/15/85	8/28/95 60 FR 44431.	
Sections 502.1 through 502.15	Sampling, Tests and Measurements	3/15/85	8/28/95 60 FR 44431	Exceptions: Paragraphs 5.11, 5.12 and 5.14 are not part of the SIP.
Section 502.18	Sampling, Tests and Measurements	9/30/93	1/26/95 60 FR 5134.	
Section 599	Definitions and Abbreviations	3/15/85	8/28/95 60 FR 44431.	
Chapter 6—Particulates				
Section 600	Fuel-Burning Particulate Emissions	3/15/85	8/28/95 60 FR 44431.	
Section 601	Rotary Cup Burners	3/15/85	8/28/95 60 FR 44431.	
Section 602	Incinerators	3/15/85	8/28/95 60 FR 44431.	
Section 603	Particulate Process Emissions	3/15/85	8/28/95 60 FR 44431.	
Section 604	Open Burning	3/15/85	8/28/95 60 FR 44431.	
Section 605	Control of Fugitive Dust	3/15/85	8/28/95 60 FR 44431.	
Section 606	Visible Emissions	3/15/85	8/28/95 60 FR 44431.	
Section 699	Definitions and Abbreviations	3/15/85	8/28/95 60 FR 44431.	
Chapter 7—Volatile Organic Compounds				
Section 710	Engraving and Plate Printing	3/15/85	8/4/92 57 FR 34249.	
Section 8–2: 707(a)	Storage of Petroleum Products	3/1/74	6/23/75 40 FR 26274.	
Section 8–2: 707(b)	Gasoline Loading	2/26/81	12/16/81 46 FR 61254.	
Section 8–2: 707(c)	Gasoline Transfer Vapor Control	2/26/81	12/16/81 46 FR 61254.	

EPA-APPROVED DISTRICT OF COLUMBIA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Comments
Section 8–2: 707(d)	Control of Evaporative Losses from the Filling of Vehicular Tanks.	2/26/81	12/16/81 46 FR 61254.	
Section 8–2: 707(e)	Dry Cleaners	3/1/74	6/23/75 40 FR 26274.	
Section 8–2: 707(f)	Organic Solvents	3/1/74	9/28/77 42 FR 49811.	
Section 8–2: 707(g)	Pumps and Compressors	7/7/72	9/22/72 37 FR 19806	Citation revised 6/23/75 @ 40 FR 26274.
Section 8–2: 707(h)	Waste Gas Disposal from Ethylene Producing Plant.	7/7/72	9/22/72 37 FR 19806	Citation revised 6/23/75 @ 40 FR 26274.
Section 8–2: 707(i)	Waste Gas Disposal from Vapor Blow-Down System.	7/7/72	9/22/72 37 FR 19806	Citation revised 6/23/75 @ 40 FR 26274.
Section 8–2: 707(j)	Solvent Cleaning Degreasing	2/26/81	12/16/81 46 FR 61254.	
Section 8–2: 707(k)	Asphalt Operations	2/26/81	9/22/72 37 FR 19806.	
Chapter 8—Asbestos, Sulfur and Nitrogen Oxides				
Section 801	Sulfur Content of Fuel Oils	3/15/85	8/28/95 60 FR 44431.	
Section 802	Sulfur Content of Coal	l3/15/85	8/28/95 60 FR 44431.	
Section 803	Sulfur Process Emissions	3/15/85	8/28/95 60 FR 44431.	
Section 804	Nitrogen Oxide Emissions	3/15/85	8/28/95 60 FR 44431.	
Section 899	Definitions and Abbreviations	3/15/85	8/28/95 60 FR 44431.	
Chapter 9—Motor Vehicle Pollutants, Lead, Odors, and Nuisance Pollutants				
Section 904	Oxygenated Fuels	9/30/93	1/26/95 60 FR 5134.	
Appendices				
Appendix 1	Emission Limits for Nitrogen Oxide	3/15/85	8/28/95 60 FR 44431.	
Appendix 2	Table of Allowable Particulate Emissions from Process Sources.	3/15/85	8/28/95 60 FR 44431.	
Appendix 3	Allowable VOC Emissions Under Section 710 ..	3/15/85	8/28/95 60 FR 44431.	

(d) EPA approved State Source specific requirements.

EPA-APPROVED DISTRICT OF COLUMBIA SOURCE-SPECIFIC PERMITS

Name of source	Permit number	State effective date	EPA approval date	Comments
None				

(e) (Reserved).

[FR Doc. 98–32422 Filed 12–4–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 211–0105; FRL–6195–8]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, San Diego Air Pollution Control District and Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan. The revisions concern rules from the following districts: San Diego Air Pollution Control District (SDAPCD) and Ventura County Air Pollution Control District (VTCAPCD). The rules control particulate matter (PM) emissions related to visible emissions and abrasive blasting, respectively. This approval action will incorporate these rules into the federally approved SIP.

The intended effect of approving these rules is to regulate emissions of PM in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals and SIPs for national primary and secondary ambient air quality standards.

DATES: This rule is effective on February 5, 1999 without further notice, unless EPA receives relevant adverse comments by January 6, 1999. If EPA receives such comments, then it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the rules and EPA's evaluation report for the rules are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are available for inspection at the following locations:

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

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, S.W., Washington, DC 20460

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

San Diego Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1096

Ventura County Air Pollution Control District, 702 County Square Drive, Ventura, CA 93003

FOR FURTHER INFORMATION CONTACT: Karen Irwin, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1903.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being approved into the California SIP include: SDAPCD Rule 50, Visible Emissions and VTCAPCD Rule 74.1, Abrasive Blasting. These rules were submitted by the California Air Resources Board to EPA on June 23, 1998 and January 28, 1992, respectively.

II. Background

On March 3, 1978, EPA promulgated a list of total suspended particulate (TSP) nonattainment areas under the provisions of the 1977 Clean Air Act (1977 CAA or pre-amended Act), that included the San Diego Air Basin (West portion of San Diego County) (43 FR 8964; 40 CFR 81.305). On July 1, 1987 (52 FR 24672) EPA replaced the TSP standards with new PM standards applying only to PM up to 10 microns in diameter (PM–10).[1] On November 15, 1990, amendments to the 1977 CAA were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. On the date of enactment of the 1990 CAA Amendments, PM–10 areas meeting the qualifications of section 107(d)(4)(B)(iii) of the Act were designated unclassifiable by operation of law. The San Diego Air Basin and Ventura County were not among the areas designated unclassifiable.

As part of updating the California SIP, the State of California submitted many PM–10 rules for incorporation into the California SIP on June 23, 1998 and January 28, 1992, including the rules being acted on in this document. This document addresses EPA's direct-final action for SDAPCD Rule 50, Visible Emissions, and VTCAPCD Rule 74.1, Abrasive Blasting. SDAPCD adopted Rule 50 on August 13, 1997. VTCAPCD adopted Rule 74.1 on November 12, 1991. These submitted rules were found to be complete on August 25, 1998 and April 3, 1992, respectively, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 Appendix V[2] and are being finalized for approval into the SIP.

SDAPCD Rule 50 is a generally applicable rule that controls visible emissions from a variety of sources. VTCAPCD Rule 74.1 controls emissions from abrasive blasting. PM emissions can harm human health and the environment. These rules were originally adopted as part of SDAPCO's and VTCAPCD's efforts to maintain the National Ambient Air Quality Standard (NAAQS) for PM–10. The following is EPA's evaluation and final action for these rules.

III. EPA Evaluation and Action

In determining the approvability of a PM–10 rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). EPA must also ensure that rules are enforceable and strengthen or maintain the SIP's control strategy.

There is currently no version of VTCAPCD Rule 74.1, Abrasive Blasting, in the SIP. The submitted rule includes the following provisions:

- A Ringlemann 1 (20 percent opacity) standard applies to abrasive blasting conducted within a permanent building;
- A Ringlemann 2 (40 percent opacity) standard applies to abrasive blasting conducted outside of a permanent building;
- All abrasive blasting operations must be conducted within a permanent building with certain exceptions;
- Abrasives used for dry outdoor blasting must be certified by the California Air Resources Board to meet percent by weight material standards. Otherwise, wet abrasive blasting, hydroblasting or vacuum blasting must be used with certain exceptions.

On September 28, 1981, EPA approved into the SIP a version of Rule 50 that had been adopted by SDAPCD prior to this date.

SDAPCD's submitted Rule 50, Visible Emissions, includes the following significant changes from the current SIP:

- Adds source-specific exemptions;
- Relaxes the standard for asphalt plant drop zone discharges from Ringlemann 1 (20% opacity) to Ringlemann 2 (40% opacity);
- Adds a specific provision for diesel pile-driving hammers that relaxes the applicable Ringlemann 1 standard not to exceed three minutes per hour to a Ringlemann 1 standard not to exceed four minutes during the driving of a single pile or, when kerosene fuel, smoke-suppressing fuel additives and synthetic lubricating oil are used, a Ringlemann 2 standard not to exceed four minutes during the driving of a single pile;
- Relaxes the standard for discharges from asphalt paving equipment with an application temperature specification of 320 degrees Fahrenheit or higher and pavement rehabilitation equipment from Ringlemann 1 to Ringlemann 2;
- Relaxes the standard for discharges from the operation, maintenance or testing of fire fighting training units used exclusively for the purpose of shipboard fire fighting training from Ringlemann 1 to Ringlemann 2.

While some provisions are being relaxed, EPA believes these relaxations are de minimis and do not violate section 110(l) of the Clean Air Act. EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and

[1] On July 18, 1997 EPA promulgated revised and new standards for PM–10 and PM–2.5 (62 FR 38651). EPA has not yet established specific plan and control requirements for the revised and new standards.

[2] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

EPA policy. Therefore, SDAPCD Rule 50, Visible Emissions, and VTCAPCD Rule 74.1, Abrasive Blasting, are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a). A more detailed evaluation can be found in EPA's evaluation report for these rules.

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

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment 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 relevant adverse comments be filed. This rule will be effective February 5, 1999 without further notice unless the Agency receives relevant adverse comments by January 6, 1999.

If the EPA receives such comments, then EPA will publish a timely withdrawal 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 on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on February 5, 1999 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, 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. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, 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. 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 February 5, 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, Intergovernmental relations, Reporting and recordkeeping requirements, Particulate matter.

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

Dated: November 20, 1998.

Laura Yoshii,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(187)(i)(B)(*2*) and (256)(i)(B)(*1*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(187) * * *

(i) * * *

(B) * * *

(*2*) Rule 74.1, adopted on November 12, 1991.

* * * * *

(256) * * *

(i) * * *

(B) San Diego County Air Pollution Control District.

(*1*) Rule 50, adopted on August 13, 1997.

[FR Doc. 98–32417 Filed 12–4–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[CS Docket No. 96–83; FCC 98–214]

Preemption of Local Zoning Regulation of Satellite Earth Stations and Restrictions on Over-the-Air Reception Devices: Television Broadcast Service and Multichannel Multipoint Distribution Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition on reconsideration.

SUMMARY: This Order on Reconsideration affirms and clarifies the Over-the-Air Reception Devices Rule, which prohibits governmental and non-governmental restrictions that impair a viewer's ability to receive video programming through devices designed for over-the-air reception of DBS, MDS, or television broadcast signals. This Order resolves petitions for reconsideration of the Preemption of Restrictions on Over-the-Air Reception Devices Report and Order (CS Docket No. 96–83, FCC 96–328, 61 FR 46557) by reaffirming and clarifying certain parts of the rule.

EFFECTIVE DATES: January 6, 1999, except § 1.4000(d) and (e) contain information collection requirements that will become effective February 16, 1999 following approval by the Office of Management and Budget, unless timely notice is published in the **Federal Register**. The Commission will publish a document in the **Federal Register** announcing the effective dates for those sections. Written comments by the public on the modified information collection requirements are due on or before February 5, 1999. If you anticipate that you will be submitting comments on the modified information collection requirements, but find it difficult to do so within the period of time allowed by this notice, you should advise Judy Boley, listed in the address section, as soon as possible.

ADDRESSES: A copy of any comments on the modified information collection requirements contained herein should be submitted to Judy Boley, Federal Communications, Room C1804, 445 12th St., S.W., Washington, DC 20554 or via Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Eloise Gore at (202) 418–1066 or via internet at egore@fcc.gov or Darryl Cooper at (202) 418–1039 or via internet at dacooper@fcc.gov. For additional information concerning the modified information collection requirements contained in the Order on Reconsideration contact Judy Boley at (202) 418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Order on Reconsideration, CS Docket No. 96–83, adopted August 27, 1998 and released September 25, 1998. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. 20554, or may be purchased from the Commission's copy contractor, International Transcription Service (''ITS''), (202) 857–3800, 1231 20th Street, NW, Washington, D.C. 20036, or may be reviewed via internet at http://www.fcc.gov/Bureaus/Cable/WWW/csb.html. For copies in alternative formats, such as braille, audio cassette or large print, please contact Sheila Ray at ITS.

Paperwork Reduction Act

The requirements contained in this Order on Reconsideration have been analyzed with respect to the Paperwork Reduction Act of 1995 (the ''1995 Act'') and would impose modified information collection requirements on the public. As part of its continuing effort to reduce paperwork burdens, we invite the general public to take this opportunity to comment on the information collection requirements contained in this Order on Reconsideration, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public comments are due 60 days from date of publication of this Order on Reconsideration in the **Federal Register** and then implementation of any modified information collection requirements will be subject to approval by the Office of Management and Budget (''OMB'') as prescribed by the 1995 Act. Comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–0707.

Title: Over-the-Air Reception Devices.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals, state and local governments.

Number of Respondents: 320.

Estimated Time Per Response: 2–6 hours.

Frequency of Response: On occasion.

Total Annual Burden to Respondents: 1,240 hours.

Total Annual Cost to Respondents: $138,000.

Needs and Uses: Petitions for waivers of the Section 207 rules are used by the Commission to determine whether the state, local or non-governmental regulation or restriction is unique in a way that justifies waiver of our rules prohibiting restrictions on the use of over-the-air reception devices. Petitions for declaratory rulings pursuant to the Section 207 rules are used by the Commission to determine whether the state, local or non-governmental regulation or restriction is preempted.

Synopsis of Order on Reconsideration

Introductory Background

1. In the Order on Reconsideration, the Commission grants in part and denies in part petitions for reconsideration of the Commission's implementation of section 207 of the Telecommunications Act of 1996 (''1996 Act'') (Pub. L. 104–104, 110 Stat. 114 (Feb. 8, 1996)) in its Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking (''Report and Order'' and ''Further Notice'') released on August 6, 1996 (In re Preemption of Local Zoning Regulation of Satellite Earth Stations, and In re Implementation of Section 207 of the Telecommunications Act of 1996, Restrictions on Over-the-Air Reception Devices: Television Broadcast Service and Multichannel Multipoint Distribution Service, IB Docket No. 95–59, CS Docket No. 96–83 (consolidated), 61 FR 46557 September 4, 1996). The Report and Order adopted 47 CFR 1.4000 (the ''Section 207 rules''), that generally prohibits both governmental and nongovernmental restrictions that impair the installation, maintenance or use of over-the-air reception devices covered by Section 207 (''Section 207 devices''), unless the restriction is necessary for safety or historic preservation reasons and is no more burdensome than necessary to achieve those objectives. Section 207 expressly covers over-the-air reception devices used to receive television broadcast signals (''TVBS''), multichannel multipoint distribution service (''MMDS''), and direct broadcast satellite services (''DBS''). The rules implementing Section 207 also cover: (1) any type of multipoint distribution service, including not only MMDS but also instructional television fixed service (''ITFS'') and local multipoint distribution service (''LMDS''); (2) medium-power satellite services using antennas of one meter or less, even though such services may not be technically defined as DBS elsewhere in the Commission's rules; and (3) DBS antennas of over one meter in Alaska (smaller DBS antennas do not work in Alaska). Under the rules the Commission promulgated pursuant to Section 207, a restriction impairs a viewer's Section 207 rights if it (1) unreasonably delays or prevents installation, maintenance, or use of a covered Section 207 reception device, (2) unreasonably increases the costs of installation, maintenance or use of a covered Section 207 reception device, or (3) precludes reception of an acceptable quality signal by the device. In addition, the rules create exceptions for restrictions that promote safety objectives and historic preservation.

2. Seven petitions for reconsideration of the Report and Order were filed raising approximately 15 issues for reconsideration. In this Order on Reconsideration, the Commission

(1) reaffirms the decision not to prohibit all restrictions on a viewer's ability to install, maintain and use Section 207 reception equipment;

(2) denies a petition to revise the safety exception to apply only to ''compelling'' safety objectives; adopts a proposal to remove the appearance of a device from the factors examined to determine the validity of a safety objective; and revises the Section 207 rules to examine how a safety objective treats other objects that pose a similar or greater safety risk;

(3) denies a request to exclude nongovernmental entities from using the safety exception;

(4) reaffirms the decision not to exercise exclusive jurisdiction over the enforcement of our Section 207 rules at this time;

(5) reaffirms the decision that, based on the current record, the permit requirements of the Building Officials & Code Administrators International, Inc. (''BOCA'') code are reasonable safety restrictions;

(6) reaffirms that permit requirements designed to enforce placement restrictions are preempted by our rules;

(7) declines to adopt a *per se* restriction on DBS antenna painting requirements;

(8) adopts a proposal that a viewer be given at least 21 days during which to comply with a court or Commission order upholding a restriction before any fine or penalty may be imposed if the viewer's claim is not frivolous;

(9) reaffirms the standard for signal degradation that qualifies as an impairment under the Section 207 rules;

(10) denies a request that the Section 207 rules protect certain antennas not specifically listed in the Section 207 rules and concludes that a proponent of a new antenna must make a particular showing that the antenna should be covered by the Section 207 rules;

(11) adopts a proposal that the Section 207 rules protect antennas that have only transmission capability if these transmission antennas are used in conjunction with antennas that receive video programming;

(12) denies a request to revise the historic preservation exception to eliminate from its protection districts eligible to be listed on the National Register of Historic Places, and amends the rules to clarify the exception to include historic properties as they are

defined in the National Historic Preservation Act;

(13) denies a petition seeking a statement that any fee for installing a Section 207 device is unreasonable and declines to set a maximum cost that regulations may impose on installation that will impair, but clarifies that certain fees are unreasonable;

(14) clarifies that petitions for declaratory ruling and petitions for waiver must be served on all interested parties;

(15) revises the Section 207 rules to include certain statements made in the Report and Order;

(16) clarifies the rights of a tenant under the Section 207 rules where the tenant has the permission of the property owner to install an antenna;

(17) clarifies that a viewer with a direct or indirect ownership interest in property over which the viewer exercises exclusive use is protected by the Section 207 rules even though the viewer may not exercise exclusive control over the property; and

(18) clarifies that an association or a landlord may prohibit viewers from installing individual Section 207 devices under the Section 207 rules if the association or a landlord provides the tenant access to a central antenna facility that does not impair the viewers' rights under the Section 207 rules.

Conclusions

Not all antenna restrictions are preempted

3. Two petitions for reconsideration argued that the Commission improperly failed to preempt all restrictions on viewers' ability to install, maintain or use a reception device covered by Section 207. In this Order, the Commission reaffirms the conclusion in the Report and Order that Congress intended that the Commission exercise its discretion when determining which restrictions should be preempted under Section 207. It cannot have been Congress' intent, nor can it be in the public interest, for the Section 207 rules to override legitimate safety concerns or laws establishing the National Register of Historic Places or restrictions that in no way impair the viewer's ability to receive video programming. For example, if the viewer can receive the same strength signal in the back yard as in the front yard, then it would be an unnecessary interference with the legitimate prerogatives of local governments to preempt a restriction limiting the placement of the reception device to the back yard.

Safety exception reaffirmed, clarified and revised

4. Under the Section 207 rules, a restriction is permitted if ''it is necessary to accomplish a clearly defined safety objective.'' Several petitions requested that the Commission alter the rule to require a ''compelling'' safety objective. The Commission declines to permit only compelling safety exceptions, but reaffirms and clarifies that to fall within the safety exception, the safety objective must be ''clearly defined'' and ''serve legitimate safety goals,'' and the proponent of the safety restriction must prove that it is neither discriminatory nor more burdensome than necessary to achieve the safety objective. The rules are modified to include the term ''legitimate'' in the definition of a safety objective.

5. In the Order on Reconsideration, the Commission deletes the term ''appearance'' from the list of potential attributes that should be examined to determine whether a safety restriction is being applied in a discriminatory manner. The rules are revised to examine whether a restriction is applied to fixtures or devices posing a similar or greater safety risk as the Section 207 device and whether the restriction is applied to the extent practicable in a non-discriminatory manner to other appurtenances, devices, or fixtures, considering factors such as size, weight, and safety risk. In addition, if ''safety boilerplate'' is added to restrictive covenants for anticompetitive reasons, the Commission will weigh this factor heavily in determining whether the restriction is necessary, nondiscriminatory, and no more burdensome than necessary to accomplish the objective.

Nongovernmental safety restrictions

6. Two petitions requested that nongovernmental entities, such as homeowners' associations, be prohibited from establishing safety restrictions under our Section 207 rules. The Commission denies these requests and concludes that Section 303 of the Communications Act of 1934 (47 U.S.C. 303) (''Section 303'') permits the Commission to consider and minimize the impact of our rules on local associations and governments. If the rules did not permit private safety-based restrictions, the rules would effectively preempt portions of state tort liability law, and, because homeowners' associations focus on the problems that face a particular area or development, they are well-positioned to assess the safety needs of their individual communities.

Jurisdiction for declaratory ruling petitions

7. The Report and Order and Section 207 rules provide concurrent jurisdiction to the Commission and to courts of competent jurisdiction to hear petitions for a declaratory ruling to determine whether a particular restriction is permissible or prohibited under the Section 207 rules. This Order on Reconsideration denies several petitions that requested the Commission to reconsider the decision not to assert exclusive jurisdiction over petitions for declaratory rulings. The Communications Act does not require the Commission to exercise exclusive jurisdiction over these disputes; therefore, the Commission reaffirms its discretion to decide that it is in the public interest at the current time to share jurisdiction to adjudicate disputes with the courts and retain discretion to provide, on the Commission's motion or in response to a petition, interpretive guidance for the future based on our expertise in developing and applying the statute and the rules. The Commission also reiterates that a court may refer an issue to the Commission under the doctrine of primary jurisdiction, particularly when cases involve the determination of novel issues.

The BOCA Code restrictions

8. The Report and Order adopted rules that reflected the Building Officials & Code Administrators International, Inc. (''BOCA'') code permit provisions on antenna height and set back requirements (i.e., require an antenna user to obtain a permit to install an antenna that extends more than twelve feet above the roofline or that is taller than the distance between the antenna and the lot line, but no permit is required for antennas that are no taller than the distance between the antenna and the lot line.) Two petitions asked the Commission to reconsider and delete reliance on the BOCA code. The Order on Reconsideration reaffirms that, in the absence of superior information from those engaged in the installation or use of antennas, the BOCA code provisions regarding permits for height and setback requirements qualify as legitimate safety objectives under Section 207 rules. Acceptance of the BOCA code, however, is limited to the permit requirement and does not constitute a blanket per se prohibition of masts of a particular height. To the extent that a local authority applies BOCA in a discriminatory manner by

not requiring permits for items that pose similar or greater safety risks, such discrimination may be challenged in a particular case, and would, if not justified, be deemed impermissible under the rules. If a local authority created a per se bar to antennas over a certain height, the restriction would be prohibited. To bring the Section 207 rules into accord with the Report and Order, the rules are modified to include masts in the definition of antennas.

Prohibition of permit requirements

9. The Order on Reconsideration reaffirms that permit requirements are permissible to ensure compliance with restrictions that serve safety or historic preservation objectives. Outside of these contexts, blanket permit requirements (i.e., requiring any viewer who wants to install an antenna to obtain a permit) are generally impermissible because they cast too wide a net. A blanket permit requirement imposes unreasonable delay and expense on viewers' ability to install, maintain or use a Section 207 reception device. The Commission affirms the decisions previously made on this issue: In re Michael J. MacDonald, 13 FCC Rcd 4844 (CSB, 1997); In re CS Wireless Systems, Inc., 13 FCC Rcd 4826 (CSB, 1997); and In re Star Lambert and SBCA, 12 FCC Rcd 10424 (CSB, 1997). By contrast, in the case of legitimate safety or historic preservation restrictions, a shift in the permit framework is justified because restrictions based on safety or historic preservation objectives are enforceable even if they impair a viewer's ability to install, maintain or use a Section 207 reception device.

Painting of reception devices

10. Two petitions requested reconsideration of the Report and Order's policy accepting a requirement to paint an antenna to blend into the background provided painting does not interfere with reception. The Order on Reconsideration denies these requests and reiterates that the statement applies only to painting requirements that will not interfere with reception. This Order also clarifies that if complying with a painting requirement causes an impairment of a viewer's ability to install, maintain or use a Section 207 reception device, the requirement is prohibited under our rules; e.g., if a restriction required painting a Section 207 reception device in a manner that unreasonably increases costs or impairs the ability of the device to receive a signal, then the regulation would be impermissible.

Grace periods to comply with rulings and collection of attorneys fees

11. The Order on Reconsideration concludes that it is consistent with the purpose underlying this rule that the potential threat of a fine or penalty could operate as a substantial deterrent to viewers exercising their right to install an antenna while such a restriction is under review. Therefore, the rule is amended to give viewers at least 21 days to comply with an adverse ruling issued in a proceeding before a fine may be collected, unless the proponent of the restriction can show in the same proceeding that the viewer's claim was frivolous. During this grace period, no additional fines or penalties shall accrue against the viewer, but if at the end of the grace period the viewer has not complied with the adverse ruling, then the initial fine may be imposed. The rule does not grant a grace period to every viewer who unknowingly violates a restriction that has already been upheld in a proceeding pursuant to our rules. Nevertheless, if a viewer believes that the restriction is invalid as applied to the particular viewer and challenges a previously upheld restriction in a proceeding as provided for in our rules, and the viewer does not have a frivolous claim that the upheld restriction is invalid as applied to the particular viewer, then the viewer may be granted at least a 21 day grace period.

12. In addition, as with fines and penalties, some associations attempt to collect from viewers the attorney's fees expended by an association in its efforts to enforce a restriction even while a proceeding is pending to determine whether the association's restriction constitutes an impairment under the rules (See, e.g., In re James Sadler, (DA 98–1284, rel. July 1, 1998)). As with fines or other penalties, the attempt to assess attorney's fees while a proceeding is pending and the validity of an arguably invalid restriction has not yet been determined would undermine the purpose underlying both the Section 207 rules and the petition process. Therefore, the rules are amended to prohibit the assessment or collection of attorney's fees while a proceeding is pending.

Definition of signal impairment

13. A restriction impairs a viewer's ability to receive video programming signals if it precludes reception of an acceptable quality signal. Under the balance struck in the rules, viewers are entitled to an antenna location, if one is available, that will provide an ''acceptable'' quality signal. Subject to that limitation, local governments and community associations are entitled, in order to protect the interests of local residents, to restrict antenna placement. The proper balance is struck if an acceptable, but not necessarily always optimal, quality signal is available. For example, with respect to signals that are subject to a variety of different but gradual impairments, the rules do not mandate that an antenna can be placed at whatever height reception would be optimized.

14. The situation is altogether different, however, for devices designed to receive digital signals, such as DBS antennas, digital MMDS antennas and digital television (''DTV'') antennas. Digital antennas will at times provide no picture or sound unless they are placed and oriented for optimal reception. Where a DBS antenna has an unobstructed, direct view of a satellite, the antenna will produce a complete picture and sound and is less likely to be subjected to frequent weather blackouts. For this reason, to receive an acceptable quality signal, a DBS antenna or other digital reception device covered by Section 207 must be installed where it has an unobstructed, direct view of the satellite or other device from which video programming service is received, if such a location exists on the viewer's property and the property is covered by our rules.

Other technologies that provide over-the-air reception of video programming services

15. Section 207 and the rules apply to restrictions on devices used to receive video programming services. The Order on Reconsideration denies petitions that requested application of the rules to interactive and data transmitting antennas because petitioners did not show that these antennas receive ''video programming'' as that term is used in the Communications Act of 1934: ''programming provided by, or generally considered comparable to programming provided by, a television broadcast station'' (see Section 602(20) of the Act; 47 U.S.C. 522(20)). Section 207 is flexible and will encompass newly developed technologies if they are shown to have similar technology and functions and to provide similar services as devices encompassed by Section 207. (For example, because of their similarity in terms of function and technology to services enumerated in Section 207, MDS, ITFS and LMDS are covered by Section 207 and the Section 207 rules even though these services were not mentioned in Section 207.) Proponents must make a particular

showing that the new technology should be covered by the rules.

Transmission-only antennas that assist reception antennas

16. The Report and Order stated that the rule does not apply to devices that have transmission capability only, but antennas that have transmission capability designed for the viewer to select or use video programming are considered reception devices under this rule. The Order on Reconsideration clarifies that the rules do not distinguish between a single antenna that both receives and transmits and paired transmission and reception antennas that perform the same functions. Restrictions that impair transmission devices that work in tandem with and are necessary to enable a viewer to select video programming on a reception device are prohibited by the rules if they impair a ''viewer's ability to receive video programming'' as set forth in the Section 207 rules. This protection extends only to transmission antennas that are within the size parameters of the Section 207 rules, installed at the viewer's location, and necessary for the viewer to select video programming.

Districts eligible to be listed on the National Register of Historic Places

17. The historic preservation exception to the Section 207 rules (Section 1.4000(b)(2)) is consistent with the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470f; see also 16 U.S.C. 470a(b)(3)(F) and (I)) (''NHPA''). To maintain that consistency, the Order on Reconsideration denies a petition to eliminate properties designated ''eligible to be listed'' but not yet listed. The rule is also revised to clarify exemption of ''any prehistoric or historic district, site, building, structure or object included in, or eligible for inclusion on, the National Register of Historic Places'' to follow more faithfully the definition of historic properties in the NHPA (see 16 U.S.C. 470w(5)).

Limits on fees and costs

18. The Section 207 rules regarding fees and costs are designed to protect viewers from unreasonable expenses that discourage choosing alternative video reception devices. Both fees imposed directly by a restricting entity and costs imposed indirectly as a result of an entity's requirements or restrictions can impose an unreasonable expense that is prohibited by the Section 207 rules. For example, a fee imposes unreasonable expense when the fee is for a permit that a local government has no discretion to require. On this issue the decision of In re Star Lambert (12 FCC Rcd. 10455 (CSB, 1997)) is affirmed. The rules, however, do not prohibit all fees because a reasonable fee, in connection with a permissible requirement, may be within the standards of the Section 207 rules. The Order on Reconsideration reiterates that the standard for determining reasonable fees and costs is whether the expense imposed is reasonable in light of the cost of the equipment or services and the restriction's treatment of comparable devices. The rules are modified to include this language.

Service of petitions and pleadings

19. The Section 207 rules are revised to include language from the Report and Order clarifying that petitions for declaratory rulings and waivers must be served on interested parties. The term ''interested'' is narrowly interpreted. For example, if a homeowners' association files a petition or a lawsuit seeking to have a restriction declared valid and seeking to enforce the restriction against a particular viewer, service must be made on the particular viewer. The homeowners' association is not required to serve all other members of the association, but must provide reasonable, constructive notice of the proceeding to other residents whose interests may foreseeably be affected by the proceeding (e.g., by placing notices in residents' mailboxes, by placing a notice on a community bulletin board, or by placing the notice in an association newsletter). Similarly, if a local government seeks a declaratory ruling or a waiver from the Commission, the local government must take steps to afford reasonable, constructive notice to residents in its jurisdiction (e.g., by placing a notice in a local newspaper of general circulation). If a viewer files a petition or lawsuit challenging a local government's ordinance or an association's restriction, the viewer must serve the local government or association. Certificates of service and proof of constructive notice must be provided with a petition. The petitioner should provide a copy of the notice and an explanation of where the notice was placed and how many people the notice might reasonably have reached. Parties to a lawsuit that raises issues involving the applicability or the interpretation of Section 207 or the Section 207 rules are encouraged to provide notice of the lawsuit to the Commission and to provide the Commission with a copy of the relevant pleading.

Placing statements from the Report and Order in the Section 207 rules

20. The rules are revised to include certain statements from the Report and Order. First, the revised rules provide that if a petition is filed challenging a restriction, enforcement of that restriction (except restrictions pertaining to safety and historic preservation) is prohibited pending completion of review by a court or the Commission. (Commission review is completed when an order is released and is no longer subject to review or appeal, or when the petition is dismissed or returned without further action.) In addition, the rules are revised to clarify that the party seeking to enforce a restriction has the burden of demonstrating that a particular restriction complies with the rules. The Order on Reconsideration reiterates that placing the burden on consumers would hinder competition and fail to implement Congress' directive, as such a burden could serve as a disincentive to consumers to choose TVBS, MMDS, or DBS services.

21. The standard for review of aesthetic requirements is further clarified by adding the following explanatory language from the Report and Order to paragraph (a) of Section 1.4000: ''Any fee or cost imposed on a viewer by a rule, law, regulation or restriction must be reasonable in light of the cost of the equipment or services and the rule, law, regulation or restriction's treatment of comparable devices.''

Application of the Section 207 rules to tenants who have the owner's permission to install an antenna

22. For purposes of the Section 207 rules, a renter, tenant, or any other person residing on a property owner's property with the property owner's permission (''tenant viewer''), who has the property owner's permission to install, maintain and use a Section 207 reception device on the property, shall be treated as a covered viewer with regard to third party restrictions under our Section 207 rules. In this connection, the tenant viewer shall have the same rights under the Section 207 rules as would the owner vis-a-vis restrictions enacted by a homeowners' association, condominium or cooperative association, townhome association, manufactured housing park owner, government and/or any other third party. Thus, if an owner residing on the property were entitled to install a Section 207 device on the property under the rules, then a tenant occupying the property is also entitled to install a

Section 207 device on the property provided the property owner consents.

Property under the exclusive use of the viewer

23. The Section 207 rules protect ''property within the exclusive use or control of the antenna user where the user has a direct or indirect ownership interest.'' The Order on Reconsideration clarifies that the rules protect a viewer who has either exclusive use *or* exclusive control of property in which the viewer has a direct or indirect ownership interest. It is not necessary for a viewer to have exclusive control over the property to be protected by the Section 207 rules. For instance, condominium owners, townhome owners, cooperative owners or owners of a manufactured home may not have exclusive control over their dwellings because the association or the park owner may retain rights to enter their dwellings to perform inspections or repairs. These owners have exclusive use over their dwellings because they are the only parties entitled to the beneficial use of the dwellings. A condominium owner, townhome owner, owner of a manufactured home, or cooperative unit dweller who has exclusive use of a balcony, balcony railing, deck, patio, or any other type of property where they have a direct or indirect property interest, has the right, subject to certain restrictions of our Section 207 rules, to place Section 207 devices thereon. That third parties have rights to enter and/or exercise control (e.g., banning grills on balconies) over the owner's exclusive-use area does not defeat the owner's Section 207 rights.

24. With respect to condominiums and cooperatives, the rule applies to antenna restrictions on balconies, decks, patios or similar areas even if the unit owner does not have exclusive ownership, so long as the unit owner has direct or indirect ownership and exclusive use over the area. (In a housing cooperative, the residents' ownership interest in the controlling entity entitles them to exclusive use of a unit and nonexclusive use and enjoyment of other common areas.) Restrictions on a cooperative owner's use of his or her unit and exclusive use areas are prohibited because (1) the owner has an indirect ownership interest in his or her unit and (2) the owner exercises exclusive use or control. Restrictions on the cooperative owner's use of common cooperative property are not prohibited if the cooperative owner does not exercise exclusive use over the common property. With respect to manufactured (mobile) homes, the owner of a manufactured home is protected by the Section 207 rules even if the home rests on property leased from someone else because the owner has a direct property interest in the home and has exclusive use of the home. Thus, a manufactured home owner, or the owner of any other type of home that rests on leased property, has rights under Section 207, subject to the rules' language and exceptions, to place a Section 207 device anywhere on the home.

Restrictions related to the existence of a Central Antenna

25. The Further Notice requested comments on a proposal to create an exception to the rules to allow antenna restrictions if a community association, landlord or similar private entity voluntarily makes video programming available through a central reception facility. The Order on Reconsideration concludes that this proposal is properly analyzed under the current Section 207 framework, and it is not necessary to amend the Section 207 rules to allow for a central antenna. The installation of a central antenna, and a concomitant restriction on the installation of individual antennas, does not constitute an impairment under the Section 207 rules if, like any other restriction, it does not impair installation, maintenance and use. This Order clarifies that restrictions related to the existence and availability of a central antenna are generally permissible provided that: (1) the viewer receives the particular video programming service the viewer desires and could receive with an individual antenna (e.g., the viewer would be entitled to receive service from a specific DBS provider, not simply a DBS service selected by the association); (2) the video reception in the viewer's home using the central antenna is of an acceptable quality as good as, or better than, the quality the viewer could receive with an individual antenna; (3) the costs associated with the use of the central antenna (including installation and subscriber fees) are not greater than the expense of installation, maintenance and use of an individual antenna; and (4) the requirement to use the central antenna in lieu of an individual antenna does not unreasonably delay the viewer's ability to receive video programming. The Order on Reconsideration further clarifies that no community or association is required by these rules to install a central antenna.

Regulatory Flexibility Analysis

26. As required by the Regulatory Flexibility Act (''RFA''), an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated in International Bureau (IB) Docket No. 95–59 (''DBS Order and Further Notice'') and in Cable Services Bureau (CS) Docket No. 96–83 (''TVBS-MMDS Notice''). The Commission sought written public comment on the proposals in those proceedings, including comment on the IRFA's. The Commission's Final Regulatory Flexibility Analysis (''FRFA'') was issued in the Report and Order and conformed to the RFA. Pursuant to the RFA, the Commission's final analysis with respect to this Order on Reconsideration is as follows.

Need for, and Objectives of, this Order on Reconsideration

27. This Order on Reconsideration implements Section 207 of the Telecommunications Act of 1996, Public Law 104–104, 110 Stat. 56. Section 207 directs the Commission to promulgate regulations to prohibit restrictions that impair a viewer's ability to receive video programming services through certain devices designed for over-the-air reception, including MMDS, LMDS, DBS, TVBS and ITFS (''Section 207 devices''). This action is authorized under the Communications Act of 1934 1, as amended, 47 U.S.C. 151, pursuant to the Communications Act of 1934 § 303, as amended, 47 U.S.C. 303, and by Section 207 of the Telecommunications Act of 1996. This Order on Reconsideration provides guidance on how the Commission will interpret its Section 207 rules and amends the Section 207 rules to provide more clarity in the existing rules.

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

28. None of the parties in this proceeding filed comments on how issues raised in the petitions for reconsideration would impact small entities. Nevertheless, the impact of the amendment of our Section 207 rules on small entities was considered, as discussed below.

Description and Estimate of the Number of Small Entities to Which Rules Will Apply

29. The Regulatory Flexibility Act defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction,'' and ''the same meaning as the term ''small business concern'' under Section 3 of the Small Business Act.'' The rule applies to small organizations, small governmental jurisdictions, and small businesses.

30. The term ''small governmental jurisdiction'' is defined as ''governments of . . . districts, with a population of less than fifty thousand.'' There are 85,006 governmental entities in the United States. This number includes such entities as states, counties, cities, utility districts and school districts. We note that restrictions concerning antenna installation are usually promulgated by cities, towns and counties, not school or utility districts. Of the 85,006 governmental entities, 38,978 are counties, cities and towns; and of those, 37,566, or 96%, have populations of fewer than 50,000. One commenter estimates that there are 37,000 ''small governmental jurisdictions'' that may be affected by the proposed rule.

31. Section 601(4) of the Regulatory Flexibility Act defines ''small organization'' as ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' This definition includes homeowner and condominium associations that operate as not-for-profit organizations. An industry association estimates that there were 150,000 associations in 1993. Given the nature of a neighborhood association, we assume for the purposes of this FRFA that all 150,000 associations are small organizations.

32. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). Industry sources estimate that the following SIC codes apply to this industry: SIC Codes 6512 (operators of nonresidential buildings), 6513 (operators of apartment buildings), and 6514 (operators of dwellings other than apartment buildings). The SBA defines a small entity in each of these codes as one with less than $5,000,000 in gross annual revenues. Based on census data that lists businesses according to these SIC codes and their total revenue, industry sources state that there are 28,089 operators of nonresidential buildings and 39,903 operators of apartment buildings. Industry sources state the Bureau of Census includes operators of dwellings other than apartment buildings in the same category as other types of businesses, but states that the figures for this category as a whole show that the number of operators of dwellings other than apartment buildings are similar to the numbers of operators covered by SIC codes 6512 and 6513.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

33. The revised rules clarify that petitions for declaratory judgment and waivers must be served on interested parties and that a certificate of service must be filed with the petition or the complaint. In addition, the revised rules require associations and local governments in Commission proceedings to provide constructive notice to their members or citizens and file a copy of the notice with the Commission with a statement explaining where the notice was placed and why such placement was reasonable. In a court proceeding brought by an association, the association must give constructive notice to its members.

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

34. The Commission finds that there are no significant alternatives to the rules and policies set forth in this Order that would minimize the economic impact on small entities, and notes that no commenter proffered alternatives to these rules and policies. Because most of the conclusions reached in this Order on Reconsideration merely clarify and provide guidance under the current Section 207 rules, those conclusions need not be analyzed here because the impact of the current Section 207 rules was already analyzed in the Report and Order. Nevertheless, there are some changes to the rules that are addressed here.

35. First, the Commission adopts a proposal that viewers be given at least 21 days during which to comply with a court or Commission order upholding a restriction before any fine or penalty may be imposed on the viewer if the viewer's claim is not frivolous that the restriction was facially invalid or was invalid as applied to the specific viewer. The Order concludes that the potential threat of a fine or penalty could operate as a substantial deterrent to viewers exercising their right to install an antenna while such a restriction is under review and there is no significant alternative way to remove this deterrent.

36. Second, the revised rules clarify that the burden of demonstrating that a particular restriction complies with the Section 207 rules rests with the proponent in both a court and Commission proceeding. No one proposed a significant alternative to this rule.

37. Third, the Section 207 rules protect antennas that have transmission capability only if these transmission antennas are used in conjunction with antennas that receive video programming. Because this ruling was merely a clarification of the initial rule, this ruling has no more impact than the initial ruling analyzed in the Report and Order.

38. Fourth, the revised rules protect ''properties,'' not just ''districts,'' listed or eligible to be listed on the National Register of Historic Places. No significant alternative was proposed that would not run afoul of federal laws and regulations protecting such properties.

39. Fifth, the Order rejects a proposal that the Section 207 rules protect per se any other new antenna not specifically listed in the Section 207 rules. This decision was required by the statutory language of Section 207. Moreover, the impact of this rule is diminished because the Commission will consider on a case by case basis whether a particular device is covered by the rules.

40. Sixth, as set forth, the rules clarify how service should be made and how certification of service provided. No significant alternative was proposed.

Report to Congress: The Commission will send a copy of this Order on Reconsideration, including this FRFA, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A).

Ordering Clauses

41. Accordingly, it is ordered that, pursuant to authority found in Sections 4(i), 4(j), and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), and 303, and Section 207 of the Telecommunications Act of 1996, Public Law 104–104, 110 Stat. 56, the Commission's rules are hereby amended. The amendments shall become effective January 6, 1999, except that § 1.4000 (d) and (e), which contain new information collection requirements that shall become effective upon approval by OMB, but no sooner than February 16, 1999. The Commission will publish a document in the **Federal Register** announcing the effective date for those sections.

42. It is further ordered that the Petitions for Reconsideration in CS Docket No. 96–83 are granted in part and denied in part.

43. It is further ordered that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Order on Reconsideration, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance

with paragraph 603(a) of the Regulatory Flexibility Act, Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

List of Subjects in 47 CFR Part 1

Antenna, Satellite, Telecommunications, Television.

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Branch.

Rule Changes

Part 1 of Title 47 of the Code of Federal Regulations is amended to read as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309.

2. Section 1.4000 is revised to read as follows:

§ 1.4000 Restrictions impairing reception of television broadcast signals, direct broadcast satellite services or multichannel multipoint distribution services.

(a) (1) Any restriction, including but not limited to any state or local law or regulation, including zoning, land-use, or building regulation, or any private covenant, homeowners' association rule or similar restriction on property within the exclusive use or control of the antenna user where the user has a direct or indirect ownership interest in the property, that impairs the installation, maintenance, or use of

(i) an antenna that is designed to receive direct broadcast satellite service, including direct-to-home satellite services, that is one meter or less in diameter or is located in Alaska;

(ii) an antenna that is designed to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, and that is one meter or less in diameter or diagonal measurement;

(iii) an antenna that is designed to receive television broadcast signals; or

(iv) a mast supporting an antenna described in paragraphs (a)(1)(i), (ii) or (iii) of this section; is prohibited to the extent it so impairs, subject to paragraph (b) of this section; is prohibited to the extent it so impairs, subject to paragraph (b) of this section.

(2) For purposes of this section, a law, regulation or restriction impairs installation, maintenance or use of an antenna if it

(i) Unreasonably delays or prevents installation, maintenance or use,

(ii) Unreasonably increases the cost of installation, maintenance or use, or

(iii) Precludes reception of an acceptable quality signal.

(3) Any fee or cost imposed on a viewer by a rule, law, regulation or restriction must be reasonable in light of the cost of the equipment or services and the rule, law, regulation or restriction's treatment of comparable devices. No civil, criminal, administrative, or other legal action of any kind shall be taken to enforce any restriction or regulation prohibited by this section except pursuant to paragraph (c) or (d) of this section. In addition, except with respect to restrictions pertaining to safety and historic preservation as described in paragraph (b) of this section, if a proceeding is initiated pursuant to paragraph (c) or (d) of this section, the entity seeking to enforce the antenna restrictions in question must suspend all enforcement efforts pending completion of review. No attorney's fees shall be collected or assessed and no fine or other penalties shall accrue against an antenna user while a proceeding is pending to determine the validity of any restriction. If a ruling is issued adverse to a viewer, the viewer shall be granted at least a 21 day grace period in which to comply with the adverse ruling; and neither a fine nor a penalty may be collected from the viewer if the viewer complies with the adverse ruling during this grace period, unless the proponent of the restriction demonstrates, in the same proceeding which resulted in the adverse ruling, that the viewer's claim in the proceeding was frivolous.

(b) Any restriction otherwise prohibited by paragraph (a) of this section is permitted if

(1) It is necessary to accomplish a clearly defined, legitimate safety objective that is either stated in the text, preamble or legislative history of the restriction or described as applying to that restriction in a document that is readily available to antenna users, and would be applied to the extent practicable in a non-discriminatory manner to other appurtenances, devices, or fixtures that are comparable in size and weight and pose a similar or greater safety risk as these antennas and to which local regulation would normally apply; or

(2) It is necessary to preserve a prehistoric or historic district, site, building, structure or object included in, or eligible for inclusion on, the National Register of Historic Places, as set forth in the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470, and imposes no greater restrictions on antennas covered by this rule than are imposed on the installation, maintenance or use of other modern appurtenances, devices or fixtures that are comparable in size, weight, and appearance to these antennas; and

(3) It is no more burdensome to affected antenna users than is necessary to achieve the objectives described in paragraph (b)(1) or (2) of this section.

(c) Local governments or associations may apply to the Commission for a waiver of this section under § 1.3 of this part. Waiver requests must comply with the procedures in paragraphs (e) and (g) of this section and will be put on public notice. The Commission may grant a waiver upon a showing by the applicant of local concerns of a highly specialized or unusual nature. No petition for waiver shall be considered unless it specifies the restriction at issue. Waivers granted in accordance with this section shall not apply to restrictions amended or enacted after the waiver is granted. Any responsive pleadings must be served on all parties and filed within 30 days after release of a public notice that such petition has been filed. Any replies must be filed within 15 days thereafter.

(d) Parties may petition the Commission for a declaratory ruling under § 1.2 of this part, or a court of competent jurisdiction, to determine whether a particular restriction is permissible or prohibited under this section. Petitions to the Commission must comply with the procedures in paragraphs (e) and (g) of this section and will be put on public notice. Any responsive pleadings in a Commission proceeding must be served on all parties and filed within 30 days after release of a public notice that such petition has been filed. Any replies in a Commission proceeding must be served on all parties and filed within 15 days thereafter.

(e) Copies of petitions for declaratory rulings and waivers must be served on interested parties, including parties against whom the petitioner seeks to enforce the restriction or parties whose restrictions the petitioner seeks to prohibit. A certificate of service stating on whom the petition was served must be filed with the petition. In addition, in a Commission proceeding brought by an association or a local government, constructive notice of the proceeding must be given to members of the association or to the citizens under the local government's jurisdiction. In a court proceeding brought by an association, an association must give constructive notice of the proceeding to its members. Where constructive notice

is required, the petitioner or plaintiff must file with the Commission or the court overseeing the proceeding a copy of the constructive notice with a statement explaining where the notice was placed and why such placement was reasonable.

(f) In any proceeding regarding the scope or interpretation of any provision of this section, the burden of demonstrating that a particular governmental or nongovernmental restriction complies with this section and does not impair the installation, maintenance or use of devices designed for over-the-air reception of video programming services shall be on the party that seeks to impose or maintain the restriction.

(g) All allegations of fact contained in petitions and related pleadings before the Commission must be supported by affidavit of a person or persons with actual knowledge thereof. An original and two copies of all petitions and pleadings should be addressed to the Secretary, Federal Communications Commission, 445 12th St. S.W., Washington, D.C. 20554, Attention: Cable Services Bureau. Copies of the petitions and related pleadings will be available for public inspection in the Cable Reference Room in Washington, D.C. Copies will be available for purchase from the Commission's contract copy center, and Commission decisions will be available on the Internet.

(h) So long as the property owner consents, a person residing on the property owner's property with the property owner's permission shall be treated as an antenna user covered by this section and shall have the same rights as the property owner with regard to third parties, including but not limited to local governments and associations, other than the property owner.

[FR Doc. 98–32362 Filed 12–4–98; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–138; RM–9309]

Radio Broadcasting Services; Whitehall, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 274A to Whitehall, Montana, in response to a petition filed by Whitehall Broadcasting Company. *See* 63 FR 41765, August 5, 1998. The coordinates for Channel 274A at Whitehall are 45–56–11 and 112–13–51. There is a site restriction 12.7 kilometers (7.9 miles) northwest of the community. With this action, this proceeding is terminated. A filing window for Channel 274A at Whitehall, Montana, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

EFFECTIVE DATE: January 11, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 98–138, adopted November 18, 1998, and released November 27, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Montana, is amended by adding Whitehall, Channel 274A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–32366 Filed 12–4–98; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–164; RM–9357]

Radio Broadcasting Services; Linn, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 276A to Linn, Missouri, in response to a petition filed by R. Lee and Sarah H. Wheeler. *See* 63 FR 49682, September 17, 1998. The coordinates for Channel 276A at Linn are 38–29–06 and 91–51–06. With this action, this proceeding is terminated. A filing window for Channel 276A at Linn, Missouri, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

EFFECTIVE DATE: January 11, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 98–164, adopted November 11, 1998, and released November 27, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, S.W., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by adding Linn, Channel 276A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–32364 Filed 12–4–98; 8:45 am]
BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 63, No. 234
Monday, December 7, 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 JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS No. 1946–98; AG Order No. 2194–98]

RIN 1115–AF29

Delegation of the Adjudication of Certain H–2A Petitions to the Department of Labor

AGENCY: Immigration and Naturalization Service, Department of Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the Immigration and Naturalization Service's (Service) regulations by delegating to the United States Department of Labor (DOL) the adjudication of certain petitions for aliens coming temporarily to the United States to perform agricultural labor or services (H–2A petition). The H–2A petitions affected by this action would involve only petitions filed for initial H–2A employment where the alien is not physically present in the United States and petitions to replace H–2A workers who were terminated before the end of their authorized stays with workers from outside the United States. This rule would not affect the Service's authority to make determinations at the port-of-entry of an alien's admissibility to the United States or to adjudicate other petitions. The Service has proposed these changes in order to streamline the existing H–2A petitioning process for certain foreign agricultural workers, and the proposals are intended to make it easier and less burdensome for United States employers to file petitions for such workers.

DATES: Written comments must be submitted on or before February 5, 1999.

ADDRESSES: Please submit the original and two copies of written comments to the Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, N.W., Room 5307, Washington, DC 20536. To ensure proper handling, please reference the INS No. 1946–98 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: John W. Brown, Adjudications Officer, Programs Division, Immigration and Naturalization Service, 425 I Street, N.W., Room 3214, Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

Background

What Is an H–2A Agricultural Worker?

Section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (Act) defines an H–2A worker as an alien ''having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform agricultural labor or services * * * of a temporary or seasonal nature.'' 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1188(i)(2).

What Is the Current Procedure for Hiring an H–2A Agriculture Worker?

Section 218 of the Act provides the statutory framework for the H–2A nonimmigrant program. 8 U.S.C. 1188. The current procedures for filing an H–2A petition to hire an alien to perform temporary or seasonal agricultural labor or services are described at 8 CFR 214.2(h)(5). A United States employer that desires to hire an H–2A agricultural worker must first obtain a labor certification from the DOL. The procedures for obtaining a labor certification are contained in the DOL regulations at 20 CFR part 655, subpart B. Briefly, the prospective United States employer must establish, among other things, that there are not sufficient available United States workers for the position and that the employer will pay the foreign worker in accordance with the regulations of the DOL and the United States Department of Agriculture (USDA). If the United States employer and the proposed employment of the H–2A worker meet all of the DOL requirements, the DOL will issue a labor certification. If the application for a labor certification is denied, an employer may obtain review of the denial by an administrative law judge within the DOL. After obtaining a labor certification from the DOL, the employer is required to file a Form I–129, Petition for nonimmigration Worker, with the Service. The Service reviews the Form I–129 and supporting documentation and, if approved, forwards notice of the approved petition to a consular post or port-of-entry. The foreign workers are then identified and either apply for a nonimmigrant visa at a United States consular post or for admission to the United States if exempt from the nonimmigrant visa requirements. If an H–2A petition is denied by the Service, the employer may appeal the denial of the petition to the Administrative Appeals Office (AAO). See 8 CFR 103.3, 214.2(h)(12).

Why Is the Service Making These Changes?

The Administration, including the Department of State (DOS), the DOL, the USDA, and the Service, has, for some time, been considering possible changes to the H–2A program to help streamline it, improve its operation, and address complaints by some users of the program, without weakening the program's worker protections. The General Accounting Office and the DOL's Office of Inspector General have recently completed in-depth reviews of the H–2A program, providing useful analysis and findings and making several recommendations for program changes, many of which have been accepted by the administering agencies. This rulemaking represents an attempt by the Service to simplify the petitioning process for United States employers seeking to employ foreign agricultural workers. The DOL published corresponding, proposed regulations in the **Federal Register** on October 2, 1998, 63 FR 53244–53249.

The Service's current role in the adjudication of H–2A petitions generally is limited to reviewing the Form I–129 filed by the United States employer to determine if the job offered to the foreign worker is temporary and if the United States employer has obtained a labor certification from the DOL. Moreover, the labor certification issued by the DOL is normally accepted by the Service as evidence that the position is temporary and that the United States employer has met all of the DOL's requirements with respect to the H–2A classification. Although the Service currently is authorized to approve a H–2A petition in spite of the DOL's denial of a labor certificate, it can

do so only if the petitioner overcomes the DOL's finding that qualified domestic labor is available. 8 CFR 214.2(h)(5)(ii). The Service, however, accords great weight to the DOL's findings and rarely overturns them. In addition, most Form I–129 petitions are filed for unnamed beneficiaries; the vast majority of United States employers, due to the nature of the agricultural industry, identify only the number of positions that they want to fill, not the names of the specific foreign workers. The foreign workers are identified only after the petition is approved by the Service and before visas are issued. Thus, as a practical matter, the Service's role in the processing of H–2A petitions for aliens outside of the United States generally is limited to a review of the Form I–129 petition to determine if it is accompanied by a labor certificate. Given its minimal role in this process, the Service has determined that the interests in streamlining the H–2A process outweigh those of retaining jurisdiction over the adjudication of H–2A petitions filed on behalf of aliens outside of the country.

Explanation of Changes

What Changes Are We Making to the Regulations?

The control of aliens admitted to the United States as nonimmigrants is solely the responsibility of the Attorney General. 8 U.S.C. 1103(a). Under section 103(a)(6) of the Act, however, the Attorney General has the authority ''to confer or impose upon any employee of the United States * * * any of the powers, privileges, or duties conferred or imposed by this Act or regulations issued thereunder upon officers or employees of the Service.'' 8 U.S.C. 1103(a)(6). Pursuant to this section of the Act, the Attorney General proposes to amend the Service's regulations by delegating to the Secretary of Labor her authority to adjudicate H–2A petitions where the beneficiary is not physically present in the United States.

This rule proposes to implement this delegation to the Secretary of Labor by amending 8 CFR 214.2(h)(5)(i). The rule would further advise potential United States employers to refer to the DOL regulations for information regarding the filing requirements for petitions for H–2A agricultural workers who are not physically present in the United States.

This proposed rule also would amend 8 CFR 214.2(h)(5)(ix) to delegate authority to the DOL to adjudicate a petition filed to replace an H–2A worker whose employment has been terminated early with a worker from outside of the United States. The Service, however, would retain its authority to adjudicate petitions where the substitute worker is physically present in the United States. The Service would also retain authority to adjudicate extensions of stay and petitions filed in connection with applications to change an alien's nonimmigrant status to H–2A nonimmigrant status.

What Portions of the H–2A Program Are Not Being Changed by This Rule?

As noted above, the Service does not propose to delegate its authority to adjudicate extensions of temporary stay and changes of nonimmigrant status to an H–2A nonimmigrant. The Service proposes to retain its authority in these two areas because the decisions to change nonimmigrant status and to extend an alien's period of temporary stay require complex determinations as to whether the alien is maintaining a valid nonimmigrant status and is eligible for other benefits under the Act. In addition, it would be burdensome on the DOL, whose mission does not include direct control over aliens, to make these determinations. For these reasons, the Service will not remove itself entirely from the H–2A program, but will retain a certain amount of control over the program in order to ensure that both the employer and the foreign agricultural worker remain in compliance with the Act.

Under the proposed regulation, extensions of stay would continue to be filed with the Service in accordance with 8 CFR 214.1 and 8 CFR 214.2(h)(15)(ii)(C). In addition, requests for a change of nonimmigrant status to H–2A nonimmigrant classification would continue to be filed with the Service pursuant to 8 CFR part 248. The Service also would retain its authority to adjudicate petitions filed for a change of United States employers under this proposed regulation.

The Service also intends to retain its right to adjudicate appeals of denied H–2A petitions. See 8 CFR 103.3, 214.2(h)(12). Petitions denied by the DOL would, therefore, continue to be appealed to the AAO. In this regard, the proposed regulation clarifies that, as a condition to delegation of authority, the DOL has agreed to provide notice to the petitioner of the reasons for denial and of the right to appeal to the AAO. The Service's retention of its appeal authority ensures that United States employers can obtain an independent, second-agency review of a petition denied by the DOL. This is not to be confused with the DOL's decision with respect to an application for a labor certification. Under this proposed rule, the DOL will be rendering two decisions, one on the application for a labor certification and one on the H–2A petition itself. Appeals from the denial of a labor certification will continue to be handled by the DOL.

The Service also intends to retain its authority, described in 8 CFR 214.2(h)(11), to revoke an H–2A petition approved by the DOL.

This proposed rule also would not alter the petitioner's responsibilities, set forth in 8 CFR 214.2(h)(5)(vi), to notify the Service if an H–2A alien absconds or the alien's employment ends more than 5 days before the labor certification expires. Similarly, the proposed rule would not change the provisions in 8 CFR 214.2(h)(5)(vi) requiring the petitioner to pay liquidated damages for violating its notification obligations. Further, this proposed rule would not alter 8 CFR 214.2(h)(5)(viii), which sets forth the period of an H–2A nonimmigrant admission to the United States.

In addition, the delegation of the authority to adjudicate certain H–2A petitions would not, in any way, affect the Service's responsibilities with respect to the employer sanctions provisions contained at 8 CFR part 274a, including the limitation that an H–2A worker may be employed only by the petitioning employer, as described at 8 CFR 274a.12(b)(9).

This rule also would not delegate authority to make determinations of admissibility to the United States. The Service would retain sole authority to make such determinations at the time an alien makes an application for admission at a designated port-of-entry. The delegation in this rule would only involve the approval of petitions for H–2A nonimmigrant classification. The H–2A workers would still be required to obtain a nonimmigrant visa abroad, where applicable, and make application for admission to the United States.

Finally, the Service will continue to issue Form I–94, Arrival-Departure Record, to the foreign worker at the time the alien is admitted to the United States. The Service will also continue to issue replacement Form I–94s.

What Is the Effect of These Proposed Changes?

These proposed changes will make it easier for United States employers to file petitions for H–2A agricultural workers located outside of the United States. Under this proposed rule, these employers generally will be required to file petition-related documents with only one agency—the DOL—instead of the current two agencies. This proposed change should shorten the time required for these employers to obtain the

services of H–2A workers located outside of the United States because it generally will remove the Service from the H–2A petition approval process, thereby eliminating the time and mailing costs associated with the submission of the petition package to the Service.

What Issues Will Remain After These Proposed Changes Are Made?

The adoption of the changes proposed in this rule will create a number of issues to be resolved among the Service, the DOL, and the DOS. These issues will require further discussion between the agencies and, possibly, further rulemaking. An example of one such issue is whether the DOL should use the Service's Form I–129 or create its own form to capture the information required to determine eligibility for the H–2A classification. Another issue is whether, if the DOL devises its own form, it should gather the same information that the Service currently captures on Form I–129. A further example is the issue of how to notify consular posts and ports-of-entry after a petition is approved. In this regard, the DOL could continue to use the Service's Form I–797, Notice of Action, or devise another mechanism to notify the appropriate parties of its actions. The Service, the DOL, and the DOS will continue to discuss and to work collaboratively on these issues, and others, as they arise in order to determine the best procedures to implement the delegation described in this rule. Such procedures will be addressed by the agencies in their respective regulations through the rulemaking process.

What Types of Comments Does the Service Wish to Receive From the Public?

In addition to comments directly addressing the changes proposed in this rule, the Service would appreciate comments from the public on other pertinent issues associated with this proposed delegation of authority. The Service does not wish to adopt changes that would have an adverse impact on the users of the H–2A program.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Service is issuing this rule to reduce the impact on small entities that petition for agricultural workers who are not physically present in the United States. This change is intended to reduce the amount of time required to petition for an H–2A worker and should ease the paperwork burden on prospective United States employers.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by the Small Business Regulatory Enforcement Act of 1996. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice to be a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review. Accordingly, this rule has been submitted to the Office of Management and Budget for review.

Executive Order 12612

This rule 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 rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988: Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects in 8 CFR Part 214

Administrative practice and procedures, Aliens, Employment, Reporting and recordkeeping requirements.

Accordingly, part 214 of chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282; 8 CFR part 2.

2. Section 214.2 is amended by:

a. Removing the reference to ''H–2A,'' from the first sentence in paragraph (h)(2)(i)(A);

b. Revising paragraph (h)(5)(i);

c. Revising paragraph (h)(5)(ix); and by

d. Revising paragraph (h)(10)(iii) to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(h) * * *

(5) * * *

(i) *Petition for alien to perform agricultural labor or services of a temporary or seasonal nature (H–2A)*—(A) *Filing a petition on behalf of an alien who is not physically present in the United States.* Pursuant to section 103 of the Act, the Attorney General has delegated the authority to adjudicate H–2A petitions where the beneficiary is outside of the United States to the Secretary of Labor. Therefore, an H–2A petition for a foreign agricultural worker who is not physically present in the United States shall be filed with the United States Department of Labor pursuant to its regulations at 20 CFR part 655, subpart B.

(B) *H–2A petitions filed for an alien who is in the United States or for a change of nonimmigrant status to an H–2A nonimmigrant alien.*—*(1) General.* An H–2A petition filed by a United States employer for an alien currently in the United States, or an H–2A petition requesting a change of an alien's nonimmigrant status to that of an H–2A nonimmigrant alien, must be filed with the Service on Form I–129. The petition must be filed with a single valid temporary agricultural labor certification. However, if a certification is denied, domestic labor subsequently fails to appear at the worksite, and the Department of Labor denies an appeal under section 218(e)(2) of the Act, the written denial of appeal shall be considered a certification for this purpose if filed with evidence that establishes that qualified domestic labor is unavailable. An H–2A petition may

be filed by either the employer listed on the certification, the employer's agent, or the association of United States agricultural producers named as a joint employer on the certification.

(*2*) *Multiple beneficiaries not present in the United States.* The total number of beneficiaries of a petition or series of petitions based on the same certification may not exceed the number of workers indicated on that document. A single petition can include more than one beneficiary if the total number does not exceed the number of positions indicated on the relating certification, and all beneficiaries will obtain a visa at the same consulate or not required to have a visa and will apply for admission at the same port-of-entry.

(*3*) *Unnamed beneficiaries not present in the United States.* The sole beneficiary of an H–2A petition must be named in the petition. In a petition for multiple beneficiaries, each beneficiary must be named unless he or she is not named in the certification and is outside the United States. Unnamed beneficiaries must be shown on the petition by total number.

(*4*) *Evidence supporting H–2A petitions filed with the Service.* An H–2A petitioner must show that the proposed employment qualifies as a basis for H–2A status, and that any named beneficiary qualifies for that employment. A petition will be automatically denied if filed without the certification evidence required in paragraph (h)(5)(i)(B)(*1*) of this section and, for each named beneficiary, without the initial evidence required in paragraph (h)(5)(v) of this section.

(*5*) *Special filing requirements for H–2A petitions filed with the Service.* Where a certification shows joint employers, a petition must be filed with an attachment showing that each employer has agreed to the conditions of H–2A eligibility. A petition filed by an agent must be filed with an attachment in which the employer has authorized the agent to act on its behalf, has assumed full responsibility for all representations made by the agent on its behalf, and has agreed to the conditions of H–2A eligibility.

(C) *Petitions for H–2A nonimmigrant aliens requesting an extension of temporary stay.* An H–2A petition requesting an extension of the beneficiary's temporary stay shall be filed on Form I–129 with the Service pursuant to paragraph (h)(15)(ii)(C) of this section.

* * * * *

(ix) *Substitution of beneficiaries who are terminated prior to the completion of their authorized stay in H–2A classification.* An H–2A petition may be filed to replace an H–2A worker whose employment has been terminated prior to the completion of the alien's authorized stay. In cases where the worker replacing the terminated H–2A worker is located outside the United States, the authority to adjudicate the H–2A petition is delegated to the Department of Labor. In such cases, the petition must be filed pursuant to the Department of Labor's regulations at 20 CFR part 655, subpart B. In cases where the worker who will replace the terminated H–2A worker is physically present in the United States, the H–2A petition for the substitute worker must be filed with the Service.

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(iii) *Notice of denial.* The petitioner shall be notified of the reasons for the denial and of his or her right to appeal the denial of the petition under 8 CFR part 103. In cases where the Department of Labor has adjudicated an H–2A petition, the Department of Labor will notify the petitioner of the reasons for the denial and of his or her right to file an appeal with the Administrative Appeals Office pursuant to 8 CFR part 103. There is no appeal from a decision to deny an extension of stay to the alien.

* * * * *

Dated: December 1, 1998.

Janet Reno,

Attorney General.

[FR Doc. 98–32396 Filed 12–4–98; 8:45 am]

BILLING CODE 4410–10–M

FEDERAL RESERVE SYSTEM

12 CFR Part 213

[Regulation M; Docket No. R–1028]

Consumer Leasing

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; official staff commentary.

SUMMARY: The Board is publishing for comment proposed revisions to the official staff commentary to Regulation M, which implements the Consumer Leasing Act. The commentary applies and interprets the requirements of the regulation. The proposed update would provide guidance on disclosures for lease advertisements, multiple-item leases, renegotiations and extensions and estimates of official fees and taxes.

DATES: Comments should be received by January 22, 1999.

ADDRESSES: Comments should refer to Docket No. R–1028, may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Comments addressed to Ms. Johnson may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room at all other times. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments may be inspected in room MP–500 between 9:00 a.m. and 5:00 p.m., in accordance with §§ 261.12 and 261.14, of the Board's Rules Regarding the Availability of Information. 12 CFR 261.12 and 261.14.

FOR FURTHER INFORMATION CONTACT: Kyung Cho-Miller, Staff Attorney, or Jane Ahrens, Senior Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667. For users of Telecommunications Device for the Deaf (TDD) only, Diane Jenkins at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The Consumer Leasing Act (CLA), 15 U.S.C. 1667–1667e, was enacted into law in 1976 as an amendment to the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.* The Board's Regulation M (12 CFR part 213) implements the Act. The CLA requires lessors to provide consumers with uniform cost and other disclosures about consumer lease transactions. The act generally applies to consumer leases of personal property in which the contractual obligation does not exceed $25,000 and has a term of more than four months. An automobile lease is the most common type of consumer lease covered by the Act.

The commentary (12 CFR Part 213 (Supp. I)) is a substitute for individual written staff interpretations; it is updated annually, as necessary, to address significant questions that arise. This is the first update since the January 1, 1998 compliance date for the revised regulation. The Board expects to adopt revisions to the commentary in final form in March 1999. To the extent the revisions require changes in lessors' compliance procedures, the effective date for mandatory compliance is October 1, 1999.

II. Proposed Revisions

Section 213.3—General Disclosure Requirements

3(d) Use of Estimates

Comment 3(d)(1)–1(i) provides an example for estimating official fees and

taxes. The language of the example would be revised and moved to comment 4(n)–2.

Section 213.4—Content of Disclosures

4(c) Payment Schedule and Total Amount of Periodic Payments

Comment 4(c)–1 would be revised to clarify that scheduled payments can be made at both regular and irregular intervals. A similar revision would be made in comment 1 to appendix A.

4(f) Payment Calculation

Motor vehicle lease disclosures must include a mathematical progression of how periodic payments are derived. Comment 4(f)–2 would be added to address lease transactions that involve multiple items of leased property if one of the items is not a motor vehicle under state law.

4(n) Fees and Taxes

The lessor must disclose the total amount payable by the lessee during the lease term for official and license fees, registration, certificate of title fees, and taxes. These amounts may vary over the course of the lease, and some lessors have requested guidance for calculating an estimated total amount. Proposed comment 4(n)–2 would clarify lessors' ability to use rates or charges in effect at the time of disclosure. The proposed comment would also provide guidance for estimating fees and taxes that are based on the future market value of the leased property, both of which may vary depending on the valuation method used.

Section 213.5—Renegotiations, Extensions, and Assumptions

5(a) Renegotiations

A renegotiation occurs where a lease is satisfied and replaced by a new lease which generally triggers new disclosures. Proposed comment 5(a)–1 would be added to clarify that disclosures should conform to the lessee's legal obligation.

5(b) Extensions

Proposed comment 5(b)–3 would be added to provide guidance on lease extensions, which sometimes are consummated before the end of the initial lease term. The revisions would clarify that disclosures should be based on the lessee's obligation for the period of the extension, whether the extension agreement is consummated during the initial lease term or afterwards. Any fees required in connection with the extension also must be reflected in the new disclosures, regardless of when the fees are paid.

Section 213.7—Advertising

7(d)(2) Additional Terms

Proposed comment 7(d)(2)–1 would be revised to provide guidance for advertising periodic lease payments that are affected by third-party fees that vary by state or locality, such as taxes or licenses.

Appendix A—Model Forms

Comment 1 to appendix A would be revised to provide additional examples of permissible changes to the model forms.

III. Form of Comment Letters

Comment letters should refer to Docket No. R–1028, and, when possible, should use a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3½ inch computer diskettes in any IBM-compatible DOS- or Windows-based format.

List of Subjects in 12 CFR Part 213

Advertising, Federal Reserve System, Reporting and recordkeeping requirements, Truth in lending.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions to text of the staff commentary. New language is shown inside bold-faced arrows, while language that would be deleted is set off with brackets.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 213 as follows:

PART 213—CONSUMER LEASING (REGULATION M)

1. The authority citation for part 213 would continue to read as follows:

Authority: 15 U.S.C. 1604; 1667f.

2. In Supplement I to Part 213, under *§ 213.3—General disclosure requirements*, under *Paragraph 3(d)(1) Standard*, paragraph 1. would be amended by removing ''For example:'' from the last line and paragraph 1.i. would be removed.

3. In Supplement I to Part 213, under *§ 213.4—Content of disclosures*, the following amendments would be made:

a. Under *4(c) Payment Schedule and Total Amount of Periodic Payments*, paragraph 1. would be revised; and

b. Under *4(f) Payment Calculation*, a new paragraph 2. would be added.

c. Under *4(n) Fees and Taxes*, a new paragraph 2. would be added.

The additions and revisions would read as follows:

Supplement I to Part 213—Official Staff Commentary to Regulation M

* * * * *

§ 213.4 Content of disclosures.

* * * * *

4(c) Payment Schedule and Total Amount of Periodic Payments

1. *Periodic payments.* The phrase ''number, amount, and due dates or periods of payments'' requires the disclosure of all payments that are made at regular ►or irregular◄ intervals and generally derived from rent, capitalized or amortized amounts such as depreciation, and other amounts that are collected by the lessor at the same interval(s), including, for example, taxes, maintenance, and insurance charges. Other periodic payments may, but need not, be disclosed under § 213.4(c).

* * * * *

4(f) Payment Calculation

* * * * *

►2. *Multiple-items.* If a lease transaction involves multiple items of leased property, one of which is not a motor vehicle under state law, at their option, lessors may include all items in the disclosures required under 4(f). See comment 3(a)–4 regarding disclosure of multiple transactions.◄

* * * * *

4(n) Fees and Taxes

* * * * *

►2. *Estimates.* Lessors may estimate the total amount for fees and taxes based on the rates or charges in effect at the time of the disclosure and identify it as an estimate. Where a rate is applied to the market value of the leased property, lessors have flexibility in estimating the future value of the property, including using the unamortized balance under the lease or a published valuation guide. Lessors may accompany the estimate with a statement that the actual fee or tax may be higher or lower depending on the rate in effect or the value of the leased property at the time the fee or tax is due.◄

* * * * *

4. In Supplement I to Part 213, under § 213.5—Renegotiations, extensions, and assumptions, the following amendments would be made:

a. A new undesignated heading, *5(a) Renegotiations*, and paragraph 1. would be added; and

b. Under *Paragraph 5(b) Extensions.*, a new paragraph 3. would be added.

The additions would read as follows:

§ 213.5 Renegotiations, extensions, and assumptions.

* * * * *

5(a) Renegotiations

►1. *Basis of disclosures.* Lessors have flexibility in making disclosures so long as they reflect the legal obligation under the renegotiated lease. For example, assume that a 24-month lease is replaced by a 36-month lease. The initial lease began on January 1, 1998, and was renegotiated and replaced on July 1, 1998, so that the new lease term ends on January 1, 2001. If the renegotiated lease covers the 36-month period beginning January 1, 1998, the new disclosures would reflect all payments made by the lessee on the initial lease and all payments on the renegotiated lease. However, if the renegotiated lease covers only the remaining 30 months, from July 1, 1998, to January 1, 2001, the disclosures would reflect only the charges incurred in connection with the renegotiation and the payments for the remaining period.◄

* * * * *

5(b) Extensions

* * * * *

►3. Basis of disclosures. The disclosures should be based on the extension period, including any upfront costs paid in connection with the extension. For example, assume that initially a lease ends on March 1, 1999. In January 1999, agreement is reached to extend the lease until October 1, 1999. The disclosure would include any extension fee paid in January and the periodic payments for the seven-month extension period beginning in March.◄

* * * * *

5. In Supplement I to Part 213, under *§ 213.7—Advertising,* under *Paragraph 7(d)(2) Additional Terms.*, paragraph 1. would be revised as follows:

* * * * *

§ 213.7 Advertising.

* * * * *

7(d)(2) Additional Terms

* * * * *

1. *Third-party fees that vary by state or locality.* The disclosure of ►a periodic payment or◄[the] total amount due at lease signing or delivery may:

i. Exclude third-party fees, such as taxes, licenses, and registration fees and disclose that fact; or

ii. Provide a ►periodic payment or◄ total that includes third-party fees based on a particular state or locality as long as that fact and the fact that fees may vary by state or locality are disclosed.

* * * * *

6. In Supplement I to Part 213, under *Appendix A—Model Forms,* paragraph 1. would be revised as follows:

Appendix A—Model Forms

* * * * *

1. *Permissible changes.* Although use of the model forms is not required, lessors using them properly will be deemed to be in compliance with the regulation. Generally, lessors may make certain changes in the format or content of the forms and may delete any disclosures that are inapplicable to a transaction without losing the act's protection from liability. For example, the model form based on monthly periodic payments may be modified for single-payment lease transactions or for quarterly or other ►regular or irregular periodic payments. The model form may also be modified to reflect that a transaction is an extension.◄ The content, format, and headings for the segregated disclosures must be substantially similar to those contained in the model forms; therefore, any changes should be minimal. The changes to the model forms should not be so extensive as to affect the substance and the clarity of the disclosures.

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, December 1, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–32338 Filed 12–4–98; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1029]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; official staff interpretation.

SUMMARY: The Board is publishing for comment proposed revisions to the official staff commentary to Regulation Z (Truth in Lending). The commentary applies and interprets the requirements of Regulation Z. The proposed update addresses the prohibition against the issuance of unsolicited credit cards. It provides guidance on calculating payment schedules involving private mortgage insurance. In addition, the proposed update discusses credit sale transactions where downpayments include cash and property used as a trade-in.

DATES: Comments must be received on or before January 22, 1999.

ADDRESSES: Comments, which should refer to Docket No. R–1029, may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Comments addressed to Ms. Johnson may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room at all other times. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments may be inspected in room MP–500 between 9:00 a.m. and 5:00 p.m. in accordance with §§ 261.12 and 261.14 of the Board's Rules Regarding the Availability of Information, 12 CFR 261.12 and 261.14.

FOR FURTHER INFORMATION CONTACT: Jane E. Ahrens, Senior Counsel, or Pamela Morris Blumenthal or James H. Mann, Staff Attorneys; Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for users of Telecommunications Device for the Deaf (TDD) *only*, Diane Jenkins at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Truth in Lending Act (TILA; 15 U.S.C. 1601 *et seq.*) is to promote the informed use of consumer credit by providing for disclosures about its terms and cost. The act requires creditors to disclose the cost of credit as a dollar amount (the finance charge) and as an annual percentage rate. Uniformity in creditors' disclosures is intended to assist consumers in comparison shopping. TILA requires additional disclosures for loans secured by a consumer's home and permits consumers to rescind certain transactions that involve their principal dwelling. In addition, the act regulates certain practices of creditors. The act is implemented by the Board's Regulation Z (12 CFR Part 226).

The Board's official staff commentary (12 CFR Part 226 (Supp. I)) interprets the regulation, and provides guidance to creditors in applying the regulation to specific transactions. The commentary is a substitute for individual staff interpretations; it is updated periodically to address significant questions that arise. The Board expects to adopt revisions to the commentary in final form in March 1999; to the extent the revisions impose new requirements on creditors, compliance would be

optional until October 1, 1999, the effective date for mandatory compliance.

II. Proposed Revisions

Subpart A—General

Section 226.2—Definitions and Rules of Construction

2(a) Definitions. 2(a)(15) Credit Card. Section 226.2(a)(15) defines a credit card to include any card or credit device that may be used from time to time to obtain credit. Comment 2(a)(15)–2 provides examples of cards and devices that are and are not credit cards. The comment would be revised to include additional examples of cards or devices that are credit cards, addressing recent programs where cards are marketed from the outset with both credit and non-credit features.

2(a)(18) Downpayment. Comment 2(a)(18)–3 provides guidance on how a creditor discloses the downpayment if a trade-in is involved in a credit sale transaction and if the amount of an existing lien exceeds the value of the trade-in. The comment would be revised to provide additional examples when the downpayment also includes a cash payment.

Subpart B—Open-end Credit

Section 226.12—Special Credit Card Provisions

12(a) Issuance of Credit Cards. 12(a)(1). Section 226.12(a) prohibits creditors from issuing credit cards except in response to a consumer's request or application for the card or as a renewal of, or substitute for, a previously accepted credit card. The prohibition addresses various concerns including the potential for theft and fraud and the consumer inconvenience of refuting claims of liability.

The law does not prohibit creditors from issuing unsolicited cards that have a non-credit purpose—such as check-guarantee or purchase price-discount cards, so long as they cannot be used also to obtain credit. Consumers may later be able to convert these cards to credit cards if the issuer makes a credit feature available and the consumer requests the credit.

Comment 12(a)(1)–7 provides guidance regarding a card that is issued and accepted by the consumer as a non-credit device and that subsequently is converted for use as a credit device at the consumer's request. The comment would be revised to reflect more clearly its intended purpose. For example, a purchase-price discount card may be issued on an unsolicited basis if the card issuer does not propose to connect the card with any credit plan. If the issuer later establishes a credit plan to which the card could be connected and the consumer requests access to the plan, the previously issued card can be re-encoded (or the issuer may reprogram its computers to allow the card to be used to access credit) without violating TILA.

Questions about the comment's meaning have been raised regarding its application to recent programs where unsolicited cards are marketed from the outset as both stored-value cards and credit cards. The revised comment would clarify that, because these multifunction cards are connected with credit plans when they are issued, and thus are credit cards, these cards may not be sent without the consumer's prior request or application. See comment 2(a)(15)–2. To the extent that the interpretation of rule previously may have been unclear, the Board believes that liability should not attach to a card issuer's prior reliance on comment 12(a)(1)–7 in issuing multifunction cards that included a credit feature.

Section 226.14—Determination of Annual Percentage Rate

14(c) *Annual Percentage Rate for Periodic Statements.* Comment 14(c)–10 addresses finance charges that are imposed during the current billing cycle but that relate to account activity that occurred during a prior billing cycle. The comment refers expressly to current-cycle and prior-cycle debits but not to current-cycle or prior-cycle credits. The comment is meant to cover both debits and credits, and would be revised accordingly.

Subpart C—Closed-end Credit

Section 226.18—Content of Disclosures

18(g) Payment Schedule. The Homeowners Protection Act of 1998 (HPA) limits the amount of private mortgage insurance consumers can be required to purchase. Borrowers may request cancellation of private mortgage insurance under some circumstances and lenders must terminate private mortgage insurance automatically when certain conditions are met. For example, creditors must stop collecting insurance premiums when the outstanding loan balance is 78 percent of the original value of the property provided the account is current (unless the mortgage is ''high-risk'' as defined in the statute).

Comment 18(g)–5 would be added in response to creditors' requests for guidance on how the requirements of the HPA affect TILA disclosures. TILA disclosures are based on the legal obligation between the parties. (See § 226.17(c)(1).) The payment schedule disclosure required by section 18(g) should reflect all components of the finance charge, including private mortgage insurance for the time period there is a legal obligation to maintain the insurance.

18(j) Total Sale Price. Comment 18(j)–2 provides the formula for calculating the total sale price in a credit sale transaction. In response to requests for guidance, the comment would be revised to address how the total sale price may be affected by downpayments involving cash and property that is being used as a trade-in and that has a lien exceeding the value of the trade-in.

III. Form of Comment Letters

Comment letters should refer to Docket No. R–1029, and, when possible, should use a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3½ inch computer diskettes in any IBM-compatible DOS- or Windows-based format.

List of Subjects in 12 CFR Part 226

Advertising, Banks, banking, Consumer protection, Credit, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions to the text of the staff commentary. New language is shown inside bold-faced arrows, while language that would be deleted is set off with bold-faced brackets. Comments are numbered to comply with **Federal Register** publication rules.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 226 as follows:

PART 226—TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

2. In Supplement I to Part 226, under *Section 226.2—Definitions and Rules of Construction,* the following amendments would be made:

a. Under *Paragraph 2(a)(15) Credit card.*, paragraph 2. would be revised; and

b. Under *Paragraph 2(a)(18) Downpayment.*, paragraph 3. would be revised.

The revisions would read as follows:

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Supplement I—Official Staff Interpretations

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Subpart A—General

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§ 226.2 Definitions and rules of construction

2(a) Definitions.

* * * * *

2(a)(15) Credit card.

* * * * *

2. Examples. i. Examples of credit cards include:

A. A card that guarantees checks or similar instruments, if the asset account is also tied to an overdraft line or if the instrument directly accesses a line of credit.

B. A card that accesses both a credit and an asset account (that is, a debit card).

C. An identification card that permits the consumer to defer payment on a purchase.

D. An identification card indicating loan approval that is presented to a merchant or to a lender, whether or not the consumer signs a separate promissory note for each credit extension.

►E. A card or device that can be activated upon receipt to access credit, notwithstanding the fact that the recipient must first contact the card issuer before using the card.

F. A card that has a substantive use other than credit, such as a purchase-price discount card, if the card also may be used to obtain credit (even if the recipient must first contact the card issuer to access or activate the credit feature).◄

ii. In contrast, a credit card does not include, for example:

A. A check-guarantee or debit card with no credit feature or agreement, even if the creditor occasionally honors an inadvertent overdraft.

B. Any card, key, plate, or other device that is used in order to obtain petroleum products for business purposes from a wholesale distribution facility or to gain access to that facility, and that is required to be used without regard to payment terms.

* * * * *

2(a)(18) Downpayment.

* * * * *

3. *Effect of existing liens.* In a credit sale, the ''downpayment'' may only be used to reduce the cash price. For example, when the existing lien on an automobile to be traded in exceeds the value of the automobile, creditors must disclose a zero on the downpayment line rather than a negative number. To illustrate, assume a consumer owes $10,000 on an existing automobile loan and that the trade-in value of the automobile is only $8,000, leaving a $2,000 deficit. The creditor should disclose a downpayment of $0, not -$2,000. ►Similarly, if the consumer pays $1,500 in cash (which does not extinguish the $2,000 deficit) the creditor should disclose a downpayment of $0, not -$500. But if the consumer provides $3,000 in cash (which eliminates the $2,000 deficit and contributes $1,000 to reduce the cash price), the creditor should disclose a downpayment of $1,000.◄

* * * * *

3. In Supplement I to Part 226, under *Section 226.12—Special credit card provisions,* under *Paragraph 12(a)(1),* paragraph 7. would be revised to read as follows:

* * * * *

Subpart B—Open-End Credit

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§ 226.12 Special credit card provisions

* * * * *

12(a) Issuance of credit cards.

Paragraph 12(a)(1)

* * * * *

7. *Issuance of non-credit cards.* ►i. *General.* Under 12(a)(1), a credit card cannot be issued except in response to a request or an application. (See comment 2(a)(15)–2 for examples of cards or devices that are and are not credit cards.) A credit feature may be added to a previously issued non-credit card only upon the consumer's specific request. Adding a credit feature includes re-encoding the non-credit device, or reprogramming the issuer's computer program or automated teller machines.

ii. *Examples.* Purchase-price discount cards may be sent on an unsolicited basis by an issuer that does not propose to connect the card to any credit plan. If the issuer subsequently establishes a credit plan that could be accessed by the card, it may solicit customers who have received the discount cards to offer them the credit feature, and may then reprogram its computers to provide credit access to consumers who request activativation of the credit feature.◄

[The issuance of an unsolicited device that is not, but may become, a credit card, is not prohibited provided:

- The device has some substantive purpose other than obtaining credit, such as access to non-credit services offered by the issuer;
- It cannot be used as a credit card when issued; and
- A credit capability will be added only on the recipient's request.

For example, the card issuer could send a check guarantee card on an unsolicited basis, but could not add a credit feature to that card without the consumer's specific request. The re-encoding of a debit card or other existing card that had no credit privileges when issued would be appropriate after the consumer has specifically requested a card with credit privileges. Similarly, the card issuer may add a credit feature, for example, by reprogramming the issuer's computer program or automated teller machines, or by a similar program adjustment.]

* * * * *

4. In Supplement I to Part 226, *Section 226.14—Determination of Annual Percentage Rate,* under *Paragraph 14(c) Annual percentage rate for periodic statements.,* paragraph 10.ii. is republished and paragraph 10.ii.B. would be revised to read as follows:

* * * * *

§ 226.14 Determination of annual percentage rate

* * * * *

14(c) Annual percentage rate for periodic statements.

* * * * *

10. *Prior-cycle adjustments.*

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ii. Finance charges relating to activity in prior cycles should be reflected on the periodic statement as follows:

* * * * *

B. If a finance charge ►that is posted◄[debited] to the account relates to activity for which a finance charge was debited ►or credited◄ to the account in a previous billing cycle, for example, if the finance charge relates to an adjustment such as the resolution of a billing error dispute, or an unintentional posting error, or a payment by check that was later returned unpaid for insufficient funds or other reasons, the creditor shall at its option:

1. Calculate the annual percentage rate in accord with ii.A. of this paragraph, or

2. Disclose the finance charge adjustment on the periodic statement and calculate the annual percentage rate for the current billing cycle without including the finance charge adjustment in the numerator and balances associated with the finance charge adjustment in the denominator.

* * * * *

5. In Supplement I to Part 226, under *§ 226.18—Content of disclosures*, the following amendments would be made:

a. Under *18(g) Payment schedule.*, a new paragraph 5. would be added; and

b. Under *18(j) Total sale price.*, paragraph 2. would be revised.

The addition and revision would read as follows:

* * * * *

Subpart C—Closed-End Credit

* * * * *

§ 226.18 Content of disclosures

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18(g) Payment schedule.

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►5. *Mortgage insurance.* The payment schedule should reflect the consumer's mortgage insurance payments until the date on which the creditor must automatically terminate coverage under applicable law, even though the consumer may have a right to request that the insurance be cancelled earlier.◄

* * * * *

18(j) Total sale price.

* * * * *

2. *Calculation of total sale price.* The figure to be disclosed is the sum of the cash price, other charges added under § 226.18(b)(2), and the finance charge disclosed under § 226.18(d). ►When a credit sale transaction involves property that is being used as a trade-in (an automobile, for example) and that has a lien exceeding the value of the trade-in, the total sale price is affected by the amount of any cash provided. To illustrate, assume a consumer finances the purchase of an automobile with a cash price of $20,000. The consumer owes $10,000 on an existing loan on an automobile with a trade-in value of $8,000, leaving a $2,000 deficit that the consumer must finance. If the consumer pays $3,000 in cash and no other costs are financed, the total sale price would be the sum of the $20,000 cash price and the finance charge; because the $3,000 cash payment extinguishes the $2,000 trade-in deficit no charges are added under § 226.18(b)(2). (The remaining $1,000 is a downpayment, which does not affect the total sales price.) However, if the cash payment were $1,500, the total sale price would be the sum of the $20,000 cash price, an additional $500 financed under § 226.18(b)(2) (the $2,000 deficit reduced by the $1,500 cash payment), and the finance charge.◄

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, December 1, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–32339 Filed 12–4–98; 8:45 am]

BILLING CODE 6210–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 211–0105; FRL–6195–9]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, San Diego Air Pollution Control District and Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of particulate matter (PM) emissions from visible emissions and abrasive blasting.

The intended effect of proposing approval of these rules is to regulate emissions of PM in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules section of this **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no relevant adverse comments are received, no further activity is contemplated in relation to this rule. If EPA receives relevant adverse comments, the direct final rule will not take effect and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received January 6, 1999.

ADDRESSES: Written comments should be addressed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

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

San Diego Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1096

Ventura County Air Pollution Control District, 702 County Square Drive, Ventura, CA 93003

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

FOR FURTHER INFORMATION CONTACT: Karen Irwin, Rulemaking [AIR–4], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1903

SUPPLEMENTARY INFORMATION: This document concerns San Diego Air Pollution Control District Rule 50, Visible Emissions, and Ventura County Air Pollution Control District Rule 74.1, Abrasive Blasting, submitted to EPA on June 23, 1998 and January 28, 1992, respectively, by the California Air Resources Board. For further information, please see the information provided in the Direct Final action that is located in the Rules section of this **Federal Register**.

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

Dated: November 20, 1998.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 98–32418 Filed 12–4–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[CS Docket No. 98–201; FCC 98–302]

Satellite Delivery of Broadcast Network Signals Under the Satellite Home Viewer Act

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document requests comment on the Commission's authority to modify the Grade B construct in response to petitions for rulemaking filed by the National Rural Telecommunications Cooperative (NRTC) and EchoStar Communications Corporation (Echostar) in connection with the Satellite Home Viewer Act. The intended effect is to better identify those households that are ''unserved,'' for purposes of the SHVA, by their local broadcast stations using conventional rooftop antennas.

DATES: Comments are due on or before December 11, 1998 and reply comments are due on or before December 21, 1998. Comments by the public on the modified information collection requirements are due on or before January 6, 1999. Comments by the Office of Management and Budget (''OMB'') on the modified information collection requirements are due on or before February 5, 1999.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Room TW–A325, Washington, DC 20554. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24, 121 (Friday, January 2, 1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply. A copy of any comments on the new and modified information collection requirements contained herein should be submitted to Judy Boley, Federal Communications, Room C1804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to fain__t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Donnie Fowler at (202) 418–7200 or via internet at dfowler@fcc.gov. For additional information concerning the modified information collection requirements contact Judy Boley at (202) 418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, FCC 98–302, CS Docket No. 98–201, adopted November 17, 1998 and released November 17, 1998. The full text of this Notice is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC 20554, or may be purchased from the Commission's copy contractor, International Transcription Service (''ITS''), (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036, or may be reviewed via internet at <http://www.fcc.gov/Bureaus/Cable/News__Releases/1998/nrcb8022.html>. For copies in alternative formats, such as braille, audio cassette or large print, please contact Sheila Ray at ITS.

Ex Parte Rules

This proceeding will be treated as a ''permit-but-disclose'' proceeding subject to the ''permit-but-disclose'' requirements under section 1.1206(b) of the rules. (47 CFR 1.1206(b), as revised). Ex parte presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, ex parte or otherwise, are generally prohibited. Persons making oral ex parte presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. (See 47 CFR 1.1206(b)(2), as revised.) Additional rules pertaining to oral and written presentations are set forth in 47 CFR 1.1206(b).

Synopsis of Notice of Proposed Rulemaking

I. Introductory Background

1. In this proceeding we respond to petitions for rulemaking filed by the National Rural Telecommunications Cooperative (NRTC) and EchoStar Communications Corporation (EchoStar). The petitions address the methods for determining whether a household is ''unserved'' by local network affiliated television broadcast stations for purposes of the 1988 Satellite Home Viewer Act (SHVA) (17 CFR 119 (1998). The NRTC petition was filed July 8, 1998 and placed on public notice on August 5, 1998. The EchoStar petition was filed August 18, 1998 and placed on public notice on August 26, 1998. The Commission has received comments on both petitions.

A. The Satellite Home Viewer Act

2. In the Satellite Home Viewer Act, Congress granted a limited exception to the exclusive programming copyrights enjoyed by television networks and their affiliates because it recognized that some households are unable to receive network station signals over the air. The exception is a narrow compulsory copyright license that direct-to-home (DTH) satellite video providers may use for retransmitting signals of a defined class of television network stations ''to persons who reside in unserved households.'' The term ''unserved household,'' with respect to a particular television network station is defined by SHVA to mean a household that—

''(A) cannot receive, through the use of a conventional outdoor rooftop receiving antenna, an over-the-air signal of grade B intensity (as defined by the Federal Communications Commission) of a primary network station affiliated with that network, and

(B) has not, within 90 days before the date on which that household subscribes, either initially or on renewal, to receive secondary transmissions by a satellite carrier of a network station affiliated with that network, subscribed to a cable system that provides the signal of a primary network station affiliated with that network.'' 17 CFR 119(d)(10).

In any action brought under the SHVA, the law specifies that ''the satellite carrier shall have the burden of proving that its secondary transmission of a primary transmission by a network station is for private home viewing to an unserved household.''

3. The network station compulsory copyright licenses created by the Satellite Home Viewer Act are limited because Congress recognized the importance that the network-affiliate relationship plays in delivering free, over-the-air broadcasts to American families, and because of the value of localism in broadcasting. Localism, a principle underlying the broadcast service since the Radio Act of 1927, serves the public interest by making available to local citizens information of interest to the local community (e.g., local news, information on local weather, and information on community events). Congress was concerned that without copyright protection, the economic viability of local stations, specifically those affiliated with national broadcast networks, might be jeopardized, thus undermining one important source of local information.

B. Grade B Contours and Signal Intensity

4. The Grade B intensity standard is a Commission-defined measure of the strength of a television station's broadcast signal. (See 47 CFR 73.683 and 73.685.) Developed in the 1950s, the Commission has used the Grade B standard for a variety of purposes, many of which were not envisioned at the time it was adopted. Significantly, while the Commission anticipated that the Grade B standard might be used

generally to determine the service area, or contour, of a television station, use of the standard to identify individual unserved households under SHVA was not then at issue. Grade B represents the field strength of a signal 30 feet above ground that is strong enough, in the absence of man-made noise or interference from other stations, to provide a television picture that the median observer would classify as ''acceptable'' using a receiving installation (antenna, transmission line, and receiver) typical of outlying or near-fringe areas. (See O'Connor, Robert A., ''Understanding Television's Grade A and Grade B Service Contours,'' IEEE Transactions on Broadcasting, 139 (December 1968).) The Grade B contour is defined as the set of points along which the best 50% of the locations should get an acceptable picture at least 90% of the time. The ''time variability'' planning factor used in the determination of the Grade B standard may create some confusion. In the TV & Cable Factbook, TV Stations Volume (1998 edition page A–15), the Grade B is described as providing service to 50% of locations 90% of the time. The Commission's *Sixth Report and Order* in Dockets 8736 et al. 41 FCC 148, 177 (1952), which adopted the initial television station allocation rules, states, ''In the case of Grade B service the figures are 90 percent of the time and 50 percent of the locations.'' Both the broadcast and satellite parties state the time variability factor differently than stated. They describe the field strength at the Grade B contour as being available to at least 50% of the locations at least 50% of the time. This apparent inconsistency arises from an adjustment the Commission adopted for the Grade B signal strength values when it originally established them. This adjustment results in a Grade B value that predicts reception of an acceptable picture 90% of the time. For example, on channels 2–6, a signal strength of 41 dBu is needed for an acceptable picture. In order for this signal strength to be available 90% of the time, the median or F(50,50) field strength is set at 47 dBu.

5. The Grade B contour values (which represent the required field strength in dB above one micro-volt per meter) are defined for each television channel in section 73.683 of the Commission's rules:

Channels 2–6—47 dBu
Channels 7–13—56 dBu
Channels 14–69—64 dBu

Section 73.684 contains the Commission's ''traditional'' methodology for predicting station service coverage and section 73.686 describes a procedure for making field strength measurements.

C. The PrimeTime 24 Lawsuits

6. This proceeding was precipitated by petitions for rulemaking filed following the decisions of the United States District Court for the Southern District of Florida in *CBS, Inc. et al.* v. *PrimeTime 24 Joint Venture*, 9 F.Supp.2d 1333 (S.D. FL., May 13, 1998). In that litigation, the plaintiffs—CBS Inc.; Fox Broadcasting Co.; CBS Television Affiliates Association; Post-Newsweek Stations Florida, Inc.; KPAX Communications, Inc.; LWWI Broadcasting, Inc.; and Retlaw Enterprises—brought a copyright infringement action against PrimeTime 24, a satellite carrier, for retransmitting distant network programming to satellite dish owners in violation of the SHVA. The plaintiffs alleged that PrimeTime 24 distributed the signals of distant network-affiliated television broadcast stations by satellite to subscribers that were not ''unserved households'' within the meaning of the SHVA. Finding evidence that violations of the Act had taken place, the court issued a preliminary, nationwide injunction ordering PrimeTime 24 not to deliver CBS or Fox television network programming to any customer that does not live in an unserved household. It was specifically enjoined from providing CBS or Fox network programming:

to any customer within an area shown on Longley-Rice propagation maps, created using Longley-Rice Version 1.2.2 in the manner specified by the Federal Communications Commission (''FCC''), as receiving a signal of at least grade B intensity of a CBS or Fox primary network station, without first either (i) obtaining the written consent of the CBS or Fox station affiliated or the relevant network, or (ii) after giving 15 business days written advance notice to the stations of its intention to conduct a test and of the time and place at which the test will be conducted, providing the station with a signal strength test at the customer's household showing that the household cannot receive a signal of grade B intensity.

The court ruled that the signal strength test at individual households within a station's predicted Longley-Rice contour should be ''conducted in accordance with the procedures outlined in the Declaration of Jules Cohen, filed on March 11, 1997.''

7. The court initially provided PrimeTime 24 with 90 days to comply with the preliminary injunction, which applies only to subscribers who signed up with PrimeTime 24 after March 11, 1997 (the day the plaintiffs filed their lawsuit). The parties subsequently and jointly agreed to an extension of the compliance date to February 28, 1999, and the court approved the parties' agreement on October 6, 1998. If enforced, the preliminary injunction could result in the termination of network signals to an estimated 700,000 to one million subscribers. A permanent injunction could end satellite network service to as many as 2.2 million subscribers. If the court issues a permanent injunction, the 700,000 to one million subscribers affected by the preliminary injunction will increase to include PrimeTime 24's subscribers before March 11, 1997. This would be an additional 1.5 million subscribers, thus raising the total subscribers affected by the Miami court orders to 2.2 million.

8. On July 16, 1998, a Raleigh, North Carolina, federal district court ruled against PrimeTime 24 in a similar lawsuit brought by the local ABC affiliate, *ABC, Inc.* v. *PrimeTime 24, Joint Venture*, 1998 WL 544286 (M.D. N.C., July 16, 1998) (Case No. Civ. A. 1:97CV00090). A permanent injunction followed on August 19, 1998 (1998 WL 544297 (M.D. N.C., Aug. 19, 1998) (Case No. Civ. A. 1:97CV00090)). Similar to the Miami ruling, the court found that the SHVA defines unserved household and Grade B using strictly objective standards. The court stated, ''PrimeTime's screening procedures have systematically substituted a subjective inquiry into the quality of the picture on a potential subscriber's television set for any signal strength showing. PrimeTime has ignored or turned a blind eye to the necessity of objective signal strength testing and thus willfully or repeatedly provides network programming to subscribers under SHVA.'' In contrast to the Miami ruling, the Raleigh court did not use the Longley-Rice predictive model to identify the affected subscribers, but applied the injunction to all subscribers living within 75 miles of the affiliate's transmitting tower. PrimeTime 24 has provided network services to as many as 35,000 households in the ABC affiliate's Raleigh/Durham market. At the time of the court's decision, PrimeTime 24 continued to serve more than 9,000 subscribers within the affiliate's Grade B contour. A third lawsuit was brought by an NBC affiliate in Amarillo, Texas, and awaits judgment by a federal court. *Kannan Communications, Inc.* v. *Primetime 24 Joint Venture*, No. 2–96–CV–086 (N.D. Tex.). A fourth lawsuit was filed by EchoStar against CBS, Fox,

NBC, and ABC on October 19, 1998. EchoStar asks the court to find that the Commission has never endorsed a particular model for predicting or measuring Grade B intensity for the purposes of the SHVA. EchoStar wants the court to declare that a viewer's own opinion of the quality of his or her signal quality is adequate for determining whether that home is unserved under the SHVA, and asks the court to endorse a predictive model for identifying served households such that 95% of households receive a Grade B signal 95% of the time with a 50% degree of confidence. (EchoStar's 95 / 95 / 50 court request contrasts with the request in its petition before the Commission, in which it asks for a 99 / 99 / 99 model.

D. The NRTC and EchoStar Petitions

9. In response to the Miami court case, the NRTC and EchoStar filed their petitions.

We address both Petitions in this rulemaking because the issues are similar and for reasons of administrative efficiency. The NRTC, a distributor of DirecTV DBS service, has asked the Commission to adopt, exclusively for purposes of interpreting the SHVA, a new definition of ''unserved'' that includes all households located outside a Grade B contour encompassing a geographic area in which 100 percent of the population receives over-the-air coverage by network affiliates 100 percent of the time using readily available, affordable receiving equipment. EchoStar, which is a provider of DBS service, urges the Commission to adopt a prediction model to locate unserved households. EchoStar endorses a model that predicts an area where 99 percent of households receive a Grade B signal 99 percent of the time with a 99 percent confidence level. EchoStar also urges adoption of a methodology for measuring signal strength that more closely reflects the signal that a viewer's television set actually receives. It argues that a number of flaws exist in the current measurement and prediction processes when they are used for SHVA purposes.

10. Several parties filed comments either opposing or supporting the petitions. Those opposing the petitions generally represented broadcast interests, while those supporting the petitions generally included DTH satellite interests. Broadcasters generally argue that Congress did not grant the Commission the authority to amend the definition of Grade B for purposes of the SHVA.

Specifically, they contend that Congress chose the Grade B definition that existed at the time of the SHVA's adoption because it wanted to balance the viability of network/affiliate relationships with consumers' interest in receiving broadcast network service. If the Commission alters the Grade B definition, the petitioners' opponents argue, the number of households entitled to receive distant network signals may inappropriately rise and the number of people watching the local stations will fall as the stations' viewing area shrinks. Fewer viewers could mean lower ratings and less advertising revenue. Further, the petitioners' opponents argue that a reduced viewing area might impact a network station's ability to enforce its exclusivity rights within that area.

11. Opponents to the petitions also contend that Congress did not craft the SHVA with competition in mind, and, although competition is an important goal, it carries little weight in this context. Furthermore, broadcasters challenge the DTH industry's concerns about subscribers who will lose their network signals under the Miami court's injunction by declaring that many of those subscribers are receiving that service illegally. The broadcasters advocate a local-into-local approach for satellite-delivery of network signals, whereby all local network signals would be retransmitted into a local area (e.g., Boston network affiliates would be retransmitted to Boston subscribers). Until that time, broadcasters urge the Commission to refrain from acting on a copyright issue that falls outside of its purview.

12. The DTH industry, on the other hand, contends that Congress did not freeze the definition of Grade B when it enacted the SHVA, and asserts that the Commission has legal authority to change that definition. The supporters of the petitions argue that the Commission can and should conduct a rulemaking to make the definition of Grade B more applicable to the SHVA. Some commenters contend that the current Grade B standard makes it more difficult for DTH providers to compete with cable companies, because DTH providers cannot offer network programming to subscribers while cable can. These commenters argue that subscribers are therefore less likely to consider DTH as a true alternative to cable. The DTH industry states that the Commission has not adopted a definition of Grade B for purposes of SHVA and urges adoption of a standard that reflects actual reception of an adequate television signal at a household's television set. Moreover, instead of an actual testing regime for determining a household's eligibility for retransmission of a network television station's signal, they argue, the Commission should adopt a predictive testing methodology that will be accurate and cost-effective. The DTH industry suggests a predictive testing methodology that will return results that reveal, with 99 to 100% confidence, that 99 to 100% of households within a given area can receive a network television station's signal 99 to 100% of the time. The DTH industry requests that the Commission act now to further consumer choice, foster competition, and respond to congressional support for action.

13. Members of Congress and the Executive Branch have expressed their concern about the issues raised in the petitions. On July 8, 1998, Senator McCain, Chairman of the Senate Commerce Committee, and Representative Bliley, Chairman of the House Commerce Committee, wrote the Commission, indicating that the Miami injunction ''threatens to undermine the progress the Congress has made in promoting competition.'' On August 7, 1998, Representative Boucher and 22 other members of Congress stated in a letter to the Commission that the court's preliminary injunction ''raises serious consumer and competitive issues that require immediate review and action by the Commission.'' The letter continued, ''As the expert regulatory agency in telecommunications matters, the Commission was specifically authorized by Congress to define 'Grade B' for purposes of the SHVA. . . . [W]e believe the Commission should expeditiously act to prevent the imminent disenfranchisement of more than a million satellite customers.''

14. Larry Irving, director of the National Telecommunications Information Administration (NTIA) at the Department of Commerce, stated that, depending upon which predictive methodology is used, as many as nine million households (10 percent of American television households) could change from served to unserved households. He reiterated the Administration's support for ''robust competition'' in the MVPD industry and noted that the definition of Grade B intensity could have a ''marked effect'' on satellite companies'' competitive position in the market.

II. Analysis and Request for Comments

15. These rulemaking petitions address issues that are significant to consumers and the promotion of competition, as well as to the affected industry parties, and we believe that an expedited rulemaking is necessary to protect satellite subscribers who are

truly unserved from losing network service. We seek to ensure that as many consumers as possible can receive a broadcast network signal consistent with the intent of the SHVA. We also seek to promote competition among multichannel video programming distributors, where that is possible under the SHVA, and we recognize the important role that local broadcast stations play in their communities. We acknowledge that the SHVA limits the proposals we can make to further these goals and address the petitions. Further, we do not appear to have the statutory authority to prevent most of PrimeTime 24's subscribers from losing their network service under the Miami preliminary injunction (and under a possible permanent injunction). The evidence in the Miami and Raleigh court cases strongly suggests that many, if not most, of those subscribers do not live in ''unserved households'' under any interpretation of that term.

16. Two courts have noted that Congress used the Grade B standard when it defined ''unserved households'' because it wanted an objective measure of a television signal's strength. The Commission has sought in its own regulations to advance this approach by establishing discrete field strength values (measured in dBu's) when it defined Grade B and when it created a detailed methodology for determining Grade B contours. (See 47 CFR 73.683 and 73.684.) Consequently, a satellite company may not deliver network signals to a viewer simply because the viewer is subjectively unhappy with his or her television picture. The Miami and Raleigh district courts both concluded that PrimeTime 24 has chosen not to abide by the SHVA's and the Commission's objective standard.

17. We will explore four issues in this NPRM. First, we seek comment on the Commission's authority to address the issues raised in the court decisions and the NRTC and EchoStar petitions. Second, we seek comment on changing the definition of Grade B intensity so that truly unserved households can be better identified. Third, we seek comment on endorsing or developing a methodology for accurately predicting whether an individual household is able to receive a signal of Grade B intensity. Fourth, we seek comment on developing an easy-to-use and inexpensive method for testing the strength of a broadcast network signal at an individual household.

A. Commission's Authority to Proceed

18. Several broadcasters contend that the Commission lacks the authority to grant the relief requested in the NRTC and EchoStar petitions. They state that Congress incorporated by reference the Commission's Grade B definitions and measurement procedures—effectively freezing them in place—when the SHVA was adopted in 1988. Accordingly, the broadcasters conclude that the Commission may not change its rules now. Some commenters cite legislative history purporting to show that section 73.683 was specifically included as part of an early draft of the unserved household definition, thus demonstrating Congress' intention to incorporate the definition as it existed at passage. Commenters argue that Congress did not explicitly direct the Commission to conduct a rulemaking on the definition, so the Commission has no authority to change it. They note that the SHVA is a copyright statute, not a communications law to be administered by the Commission. The National Association of Broadcasters cites a number of cases, including the Supreme Court's decision in *Hassett* v. *Welch*, for the ''well settled canon'' that ''[w]here one statute adopts the particular provisions of another by a specific and descriptive reference to the statute or provisions adopted * * * [s]uch adoption takes the statute as it exists at the time of adoption and does not include subsequent additions or modifications by the statute so taken unless it does so by express intent.'' (303 U.S. 303, 314 (1938).)

19. Parties supporting the petitions respond that Grade B intensity is an ambiguous and open-ended term in the SHVA, evidenced by Congress' failure to explicitly incorporate a rule section into the SHVA's definition of unserved households. These commenters conclude that Congress intentionally left the definition in the Commission's hands. EchoStar cites the Supreme Court's holding in *Lukhard* v. *Reed* that ''[i]t is of course not true that whenever Congress enacts legislation using a word that has a given administrative interpretation it means to freeze that administrative interpretation in place.'' (481 U.S. 368, 379 (1989).)

20. There are four matters relating to the Commission's authority to proceed on particular issues in this rulemaking. First, we seek comment on whether Congress ''froze'' the definition of a signal of Grade B intensity for purposes of the SHVA when it adopted the Act in 1988. That is, if the Commission were to revise the definition as a general matter, would the definition nevertheless remain unchanged for the purposes of the SHVA? We tentatively conclude that Congress did not ''freeze'' the definition of a signal of Grade B intensity for SHVA purposes in 1988 and seek comment on this tentative conclusion. When Congress incorporated Grade B into the definition of ''unserved households'' it did not incorporate specific values, such as the dBu levels the Commission uses in section 73.683. Further, nothing in the SHVA or legislative history indicates that Congress intended to freeze the value of Grade B when it passed the law in 1988 or when it renewed it in 1994. Where Congress intended to incorporate regulations as they existed on a certain date, it has expressly done so. For example, in section 111(f) of the Copyright Act, Congress' definition of ''local service area of a primary transmitter'' explicitly references Commission regulations ''in effect on April 15, 1976, or such station's television market as defined in section 76.55(e) of title 47, Code of Federal Regulations (as in effect on September 18, 1993) * * * ''The federal courts and the Copyright Office of the Library of Congress are primarily responsible for enforcing and administering the copyright laws, but Congress unquestionably turned to the Commission's expertise when it defined unserved household in reference to a ''signal of Grade B intensity (as defined by the Federal Communications Commission).''

21. With respect to the cases cited by commenters, we note that in reaching its conclusion in *Lukhard* v. *Reed*, the Court followed *Helvering* v. *Wilshire*, in which it held that ''a regulation interpreting a provision of one act [does not become] frozen into another act merely by reenactment of that provision.'' (308 US 90, 100–101 (1939).) Indeed, the Supreme Court reasoned that if legislation so constrained an agency's ability to conduct rulemaking under its enabling legislation, then ''the result would be to read into the grant of express administrative powers an implied condition that they were not to be exercised unless, in effect, the Congress had consented. We do not believe that such impairment of the administrative process is consistent with the statutory scheme which the Congress has designed.'' Both *Helvering* and *Lukhard* suggest that the meaning of ''signal of Grade B intensity'' in SHVA was not frozen for purposes of that Act when SHVA was enacted, but rather can be modified over time by the Commission.

22. Second, we seek comment on whether the Commission has the authority to revise its Grade B construct specifically for the purposes of the SHVA. The Grade B construct includes (1) the signal intensity levels assigned to Grade B, 47 CFR 73.683; (2) models for

predicting where a Grade B signal exists in an area or at an individual point (or household), e.g., 47 CFR 73.684 and 73.686 predictive models; and (3) the methodologies for testing signal strength in an area or at an individual point. Initially, we note that it is indisputable that the Commission has the authority, as a general matter, to revise any of its rules, as long as we explain our reasons for doing so. But may we create special provisions that would apply only to SHVA? Does the statute permit the Commission to promulgate a special definition of Grade B intensity for the exclusive purposes of the SHVA? What was the Congress' intent? Some commenters argue that we ought to make a specific definition for the SHVA because the Grade B construct is most often used for determining signal intensity over broad areas, not for individual households as the SHVA contemplates. The Commission has tailored its rules for specific purposes in the past. For example, the Commission determines television stations' service areas using two different, but related, methods, depending on the purpose. For exceptions to the cable syndicated exclusivity rules and for cross-ownership purposes, the Commission uses its traditional Grade B contour scheme, but for digital television stations, the Commission uses the Longley-Rice predictive model.

23. Third, we seek comment on whether the Commission has the authority to develop a model for predicting whether an individual household can receive a signal of Grade B intensity for purposes of the SHVA. The Commission has developed and used predictive models for determining signal intensity in other contexts—for example, the traditional Grade B contour and the Longley-Rice models. Broadcasters argue that the Commission does not have the authority to develop a predictive model for SHVA purposes, because the definition of ''unserved households'' depends on a household's actual ability to receive a signal of Grade B intensity as measured at the household itself. While satellite providers and broadcasters may negotiate the use of a predictive model, the argument continues, the SHVA does not provide the Commission with jurisdiction to interfere with or to endorse a particular predictive methodology. The satellite providers respond by citing the Commission's current use of predictive methodologies for other purposes. They argue that the Commission may therefore develop a predictive model specifically for the SHVA.

24. A predictive model need not replace actual measurement, but could serve as a presumption of service or lack of service for purposes of the SHVA. We note that some broadcasters have entered into agreements with Primestar and Netlink (satellite television providers) to resolve disputes arising from the SHVA requirements. These settlements assign five-digit zip codes to each station and classify each zip code as ''red light'' if more than 50% of the zip code's population is served—based on Longley-Rice propagation data—and as ''green light'' of 50% or less of the population in the zip code is served. A presumption could make administration of the unserved household rule easier and more cost-effective for consumers and the industry. Broadcasters and satellite providers would be able to rely on a Commission-endorsed model when deciding whether individual consumers are presumed to be eligible to receive satellite-delivered network signals. Moreover, a predictive process might be a judicially acceptable means for a satellite service provider to carry its burden of showing ''that its secondary transmission of a primary transmission by a network station is for private home viewing to an unserved household.'' Such an approach is consistent with the federal court's use of a variation of the Commission's Longley-Rice predictive methodology in its preliminary injunction in the PrimeTime 24 proceeding in Miami.

25. Fourth, we seek comment on our conclusion that the Commission's authority to define a signal of Grade B intensity reasonably includes the authority to adopt a method of measuring signal intensity at an individual household. The Commission has already established a method of measuring service within an area or for propagation analysis, but has not established a method specifically for measuring signal intensity at an individual household. The SHVA is concerned with adequate television signals at individual households. Importantly, it does not matter to consumers that other households (a next-door neighbor or a family across town) can actually receive network signals when they cannot.

B. Definition, Prediction, and Measurement Proposals

26. The measurement and prediction techniques included in part 73 of the Commission's rules and as developed in other contexts constitute a set of tools relating to signal propagation and reception that are useful for a variety of purposes. Although this proceeding focuses on concerns that are specific to SHVA, we recognize that refinements in the rules and in our knowledge about the in-home viewing environment (antennas, transmission lines, and receivers) and prediction methodologies have potential carryover into some other aspects of the Commission's rules. In some respects, however, the matters are unique to the SHVA context. Thus, for example, the Commission's rules do not typically focus on signal availability measurement techniques relating to service to a single discrete location or household. Standardization of a single household measurement process would thus not necessarily have broad implications for other parts of the Commission's rules. Although our focus is on changes specifically relevant for SHVA purposes, we seek comment on the general question of what other non-SHVA rules or policies might be implicated by the changes that are discussed below. We note, for example, that our DTV service replication models are also based upon duplicating the Grade B service area of existing analog broadcast stations. Certain interference criteria also incorporate the Grade B service area of television broadcast stations. We also note that the Commission has a history of using different tools in different contexts depending on the degree of precision desired, the expense of the process used, and the economic and technical tradeoffs involved in any specific issue. We invite comment on this issue and request that parties provide specific rationales for any differences between SHVA and non-SHVA definitions, prediction models, and measurement methods that they advocate.

1. Defining a Signal of Grade B Intensity

27. A signal of Grade B intensity is an objective standard that, as currently defined in section 73.683, may not distinguish adequately between served and unserved households. The Grade B signal intensity values specified in our rules were designed to enable reception of a television picture that is acceptable to the median observer, ''assuming a receiving installation (antenna, transmission line, and receiver) considered to be typical of outlying or near-fringe areas.'' Grade B service also assumes the absence of man-made noise or interference from other stations. There was little specific comment in the NRTC and EchoStar petitions or in the responsive pleadings addressing possible changes in the field strength levels specified in the rules. Has what constitutes a ''conventional outdoor rooftop receiving antenna'' and the concept of the quality of service that viewers consider acceptable changed

since the Commission adopted the Grade B signal strength levels in the 1950s? Would these standards need modification so that the median observer would continue to find the service acceptable? For example, receivers may have improved, or the assumptions regarding interference in outlying areas may no longer be valid. (See, e.g., Gary S. Kalagian, ''A review of the Technical Planning Factors for the VHF Television Service,'' FCC, Office of Chief Engineer, Bulletin RS77–01 (March 1, 1977), p. 11.) Changing the standard of an acceptable signal could have detrimental effects on the viability of local television stations and, potentially, on the goal of localism. We have no evidence that the underlying technical planning factors have changed in a way that would justify revising the current Grade B signal intensity levels. We welcome comments, supported by evidence, regarding any claimed changes to the assumptions made in deriving the Grade B signal intensity.

28. In soliciting comments on this issue, we recognize that our flexibility to change the Grade B intensity values is naturally constrained by the existence of the Grade A standard. The Grade A intensity values are based on 70% of the locations receiving an acceptable picture 90% of the time. Therefore, we believe that we cannot modify Grade B intensity so much that it effectively equals or exceeds Grade A signal intensity. We invite comments on all the factors that determine the Grade B signal intensity. We also seek comment on whether changes to the current intensity values would have a detrimental effect on network-affiliate relationships and localism, as well as other Commission rules that involve the current Grade B standard.

2. Predicting a Signal of Grade B Intensity

29. The definition of an unserved household as a household that ''cannot receive * * * a signal of Grade B intensity'' most logically refers to signal measurement at an individual household to determine if an adequate signal is actually received. Because of the costs and difficulties of individual measurements, however, for many purposes a predictive model is used in lieu of actual measurements. Consistent with this notion, the EchoStar petition asks the Commission to adopt or endorse an accurate model for predicting whether an individual household receives a Grade B intensity signal.

30. We believe that predictive models can be effective proxies for individual household measurements. The satellite and broadcast industry currently make use of predictive models such as the Longley-Rice methodology. However, different parties do not always agree on which model is most appropriate for identifying unserved households. Even when parties use the same model, they may disagree on the factors that are considered in that model. For example, different variations of the Longley-Rice model may or may not account for vegetation or buildings. In addition, studies using the Longley-Rice model, such as our DTV analyses, may account for interference. If the Commission endorses a predictive model in this rulemaking, parties will not need to spend future resources and time debating methodology. However, consistent with the SHVA, no Commission-endorsed model will preclude a party from using actual measurements at individual households.

31. The difference in taking actual measurements at individual households and using predictive models is significant, because measurement requires time, money, and other resources that often outweigh the benefits. For example, it may cost more for a satellite company to take a measurement than it can recover through subscriber fees. To avoid these costs, satellite providers, broadcasters, and consumers have often turned to predictive models that erroneously permit some served households to receive satellite network service, or, conversely, that prevent some unserved households from being eligible to receive network stations via satellite.

32. Even though Grade B signal intensity is defined as discrete values measured in dBu's, the intensity of broadcast signals at particular locations and at particular times cannot be precisely determined, regardless of the predictive method used. Signal strength varies randomly over location and time, so signal propagation must be considered on a statistical basis. This is true whether the signal intensity is predicted at a fixed location (such as an individual household) or over an area. Some prediction methods, including the Commission's propagation curves, predict the occurrence of median signal strengths (i.e., signal strengths expected to be exceeded at 50% of the locations in a particular area at least 50% of the time). Under this approach, ''location'' and ''time'' variability factors are added to the signal level for an acceptable picture so that the desired statistical reliability is achieved. The values chosen for the Grade B signal intensity account for this variability, and therefore, predict that the best 50% of the locations along the Grade B contour will receive an acceptable picture 90% of the time. In other predictive models, including the Longley-Rice point-to-point model, this variability is built into the model, rather than into the signal intensity value. We seek comment on whether it would be appropriate to consider changing the location and time variability percentages. For example, should more than 50% of viewers receive an acceptable picture more than 90% of the time? We also seek comment on whether such changes should be incorporated into the signal intensity values or the predictive model.

33. As previously noted, the Commission has used predictive models for determining signal intensity in the past. We seek comment on the application of these models in the SHVA context. We tentatively conclude that the Commission's traditional predictive methodology for determining a Grade B contour, outlined in section 73.684 of the Commission's rules, is insufficient for predicting signal strength at individual households. We seek comment on this tentative conclusion. The traditional Grade B methodology predicts a signal's strength by using radial lines extending ten miles from a television station's transmitter. (See 47 CFR 73.684(d) and 73.686(b).) This methodology does not accurately reflect topographic differences in a station's transmission area, and explicitly does not account for interference from other signals. These omissions result in an imperfect methodology for predicting whether an individual household can receive an adequate signal. For example, terrain features beyond 10 miles from a station's transmitter site may block a house's reception or a house that sits at the edge of two different television markets may suffer from interfering signals.

34. While our traditional Grade B contour methodology is inadequate for predicting the signal level at a single location, we have recently adopted rules in the DTV proceeding for analyzing TV service using a point-to-point prediction method based on the Longley-Rice propagation model. Our implementation of the Longley-Rice model for analysis of DTV and analog TV service in the DTV proceeding is described in ''Longley-Rice Methodology for Evaluating TV Coverage and Interference,'' OET Bulletin 69, Federal Communications Commission (July 2, 1997) <http://www.fcc.gov/oet/info/documents/bulletins/#69>. Longley-Rice is the Commission's designated methodology for determining where service is provided by a DTV station. (See 47 CFR 73.622(e).) We propose that

the Longley-Rice propagation model, as implemented for DTV, be used to refine the Grade B service prediction for the purpose of SHVA determinations. The Longley-Rice propagation model is the most widely-used private means of predicting a Grade B coverage area for SHVA purposes. It provides an estimate of signal strength, similar to the traditional Grade B contour method. However, the Longley-Rice model adjusts the predictions for changes in terrain (e.g., hills and valleys) along the entire path from the transmitter site to the specified receive site. Thus, while the traditional method often results in smooth concentric circles surrounding a transmission tower, the Longley-Rice method more precisely describes actual areas of coverage. While the broadcasters support the use of the Longley-Rice model in the SHVA context, the satellite interests claim it is insufficient. The detractors agree that a Longley-Rice analysis has advantages over a traditional Grade B contour, but note that it fails to account for several important factors that affect signal availability, including interference from other signals, vegetation, and buildings. We seek comment generally on this proposal, as well as specifically on the following questions. Should consideration of co-channel and adjacent-channel interference as implemented for DTV be part of the methodology used for SHVA purposes? Is it necessary to prescribe how accurately receive location coordinates are specified? Can Longley-Rice be modified to increase the probability of identifying served and unserved households more accurately? How? What are the predictive factors that are missing in the current Longley-Rice model? Can Longley-Rice reasonably be modified to account for all these factors? What effect would incorporation of these additional factors have on the cost and practicality of the Longley-Rice methodology? Can Longley-Rice or a modified version of Longley-Rice be used in conjunction with a commercially available geocoding process to provide a workable predictive model for satellite providers, broadcasters, and consumers to use for determining whether a given subscriber is presumed to be unserved? We seek comment on whether such currently-available approaches are working well for the industries and consumers. For example, Decisionmark Corporation is currently working with broadcasters and satellite providers to provide mapping information about signal areas. They sponsor web sites, <http://www.shva.com/maps> and <http://getawaiver.com>, that provide information about served and unserved areas to consumers, broadcasters and participating satellite providers.

35. We also invite parties to submit any other methodology that they believe will more accurately and cost-effectively predict whether an individual household is able to receive a signal of Grade B intensity. We seek to identify a predictive model that more accurately determines whether a household is unserved for purposes of the SHVA. Is there a predictive methodology that will increase the probability that unserved households will be more accurately identified (e.g., by taking into account interference)? What is that methodology? For either a version of the Longley-Rice model or another alternative methodology, how might parties use a new predictive model? Can and should the Commission endorse or develop a predictive model? Should we endorse a model that already exists or endorse such a model with modifications? What are the costs associated with any of the suggested methodologies?

36. We acknowledge and reiterate Congress' decision in the SHVA to protect network-affiliate relationships and to foster localism in broadcasting. If we change the number of viewers predicted to receive a local station, we may substantially affect these policies. As we have noted, localism is central to our policies governing broadcasting and the obligation of broadcasters to serve the public interest. In proposing a new or modified predictive model for purposes of the SHVA, we seek comment on what, if any, effects different predictive models will have on these policies, and what, if any, steps we can take to further such policies.

3. Testing for Signal Intensity at Individual Households

37. For the SHVA to function properly, a relatively low cost, accurate, and reproducible methodology for measuring the presence of a Grade B intensity signal in a household is of particular importance. Although, because of the costs and delays involved, it would be desirable to minimize the need for individual testing to the extent possible, individual testing is the key safety net mechanism under the SHVA for proving that a specific household is unserved and thus eligible under the law to receive satellite delivery of network affiliated television stations. We therefore propose to explore a method of measuring signal intensity at individual households that is accurate, easier, and less expensive than the current method.

38. The Commission's current method of measuring the field strength of over-the-air signals in a station service area requires a so-called 100-foot mobile run. The run typically involves a truck with a 30-foot antenna that takes continuous measurements while being driven a distance of 100 feet. The antenna must be rotated to the best receiving position, and engineers record factors that might affect signals, such as topography, height and type of vegetation, buildings, obstacles, and weather. If overhead obstacles get in the way, a cluster of measurements must be taken at locations within 200 feet of each other. This elaborate procedure can cost several hundred dollars each time it is performed. This is an expensive proposition for a satellite company or a consumer who wants to prove that a household is unserved by over-the-air signals. When multiplied over hundreds of households at the outer edges of a station's service area, the cost may become prohibitive and may prevent many truly unserved consumers from receiving broadcast network service.

39. In addition to the difficulties inherent in this test, many of its assumptions may not hold in individual situations. For example, many homes do not have antennas 30 feet above the ground, especially if they are one-story homes. The definition of unserved household only describes reception over a conventional outdoor rooftop receiving antenna, so requiring measurements on a 30-foot antenna may not reflect what is ''conventional.'' Requiring the truck's antenna to face the direction of the station's tower ignores the reality that consumers' antennas receive several stations, and many do not rotate to the best position for each station. Finally, requiring clusters of tests and a 100-foot mobile run ignores the fact that homes are stationary and that reception may vary considerably over a mobile run on a nearby street. The purpose of the procedure specified in the rules is not to determine the receivability of a signal at a single spot, but to determine, through measurements at a series of grid intersections over a community, the nature of service to the community. The Miami court ruled that the signal strength test should be ''conducted in accordance with the procedures outlined in the Declaration of Jules Cohen, filed on March 11, 1997,'' which ''was based on that prescribed by the FCC in 47 CFR 73.686.'' At an accessible road closest to a household, a 100-foot mobile run is made with a conventional rooftop antenna elevated to 30 feet. During the run, a station's field intensity is

recorded and the data is stored in a computer. Analysis of the data, made with the aid of a computer program, permits the extraction of the maximum, minimum, and median field intensity found, together with the standard deviation. Median field intensity minus standard deviation is a measure of the least signal intensity likely to be found at the specific location of the household. In contrast, EchoStar proposed a signal strength test that focuses more directly on a single point at a household, involving placement of a conventional outdoor rooftop antenna within three feet of the home and raised to the height of the roof. The antenna is oriented to maximize signal strength for the one local station that the consumer watches most often. A length of standard household cable is attached to the antenna, and a number of splitters are attached to duplicate the number of splitters the consumer uses to service multiple televisions. A signal measurement is then conducted. If the signal strength is not stable, the antenna is relocated and the same procedure utilized until a stable signal strength is achieved. Readings are taken approximately every thirty seconds for a period of five minutes. If any of the signal strength readings register less than the Grade B signal strength threshold as established by Congress and the FCC, the consumer will be deemed an ''unserved household'' eligible to receive distant network signals.

40. We seek comment on the modification of the current testing methodology or the creation of a new methodology for measuring signal strength. Any recommendations should lead to a test that is relatively easy to use and inexpensive enough to make it economically practical for the industry and for consumers. We seek comment on what qualifies as ''a conventional outdoor rooftop receiving antenna.'' Are different antennas required for different parts of the country, or as one moves farther from a television transmitter? What special problems do viewers in multiple dwelling unit buildings (''MDUs'') face in gaining access to a conventional outdoor rooftop television antenna? Should the testing methodology be different for high-rise MDUs? Does ''conventional outdoor rooftop receiving antenna'' include a rotor? How, if at all, should the Grade B criterion of typical of outlying or near-fringe areas influence the concept of ''conventional'' antenna? On another note, how do we ensure the objectivity and accuracy of any signal strength test? How do we do so without making the test more difficult, impractical, or expensive? How should antenna height be measured? Should antenna height be set at 30 feet, should it be five feet above the roof, or something else? Should the measurement be related to the placement of the satellite receiver in situations where the satellite and local signal antennas are integrated? If antenna designs are improved over those historically available so that the definition of ''conventional'' changes, how should that be accommodated in the measurement process? How should we account for the challenges of raising a rooftop antenna in multiple dwelling units? How should the test account for rotation, or lack of rotation, of antennas that receive the signals of several stations? What type and calibration of measurement equipment is needed? How can the process account for the variations of signal level over the course of a day or with seasonal changes?

C. Other Issues

41. We seek comment on whether the lack of an established methodology for measuring Grade B signal intensity at individual households has hampered the effective functioning of the SHVA. In particular, we note that the SHVA contains a ''loser pays'' mechanism that allows recovery, in any civil action, of signal measurement costs at a subscriber's household. (17 CFR 119(a)(9).) Under the SHVA, if a network station questions whether a particular subscriber is unserved, an actual measurement at the subscriber's household may result. If the household is unserved, the broadcast station must pay for the measurement; if the household is served, the satellite carrier must pay. We believe that the loser pays mechanism, if used even in the absence of a civil action, would substantially alleviate the cost burden of actual signal measurements by giving both parties an economic incentive to avoid actual measurements in most circumstances. We seek comment on whether parties are making use of the ''loser pays'' mechanism. If they are not, why not? Can and should we establish rules or policies that will facilitate their ability to do so? We also seek comment on whether the loser pays mechanism, combined with a predictive model that would minimize the need for individual testing in most cases, would facilitate the effective functioning of the Act.

42. We also seek comment on whether we can and should adopt a procedure similar to the SHVA's expired transitional ''loser pays'' mechanism. (17 CFR 119(a)(8)(B)(ii) and (C)(ii).) Does that provision represent a workable system for allocating burdens of proof, and appropriate incentives to challenge a presumptive rule, in determining who is and who is not an unserved household? Establishing a system based on an initial presumption would help create certainty and provide a good starting point for managing this issue on a large scale. Are there other mechanisms that can better serve the purposes of the SHVA? One alternative might be the agreement reached between broadcasters and two satellite carriers, Primestar Partners and Netlink USA, that created presumptive zones of served and unserved households based on zip codes. Yet another alternative might be the methodology developed by Decisionmark Corporation of Cedar Rapids, Iowa, that is used by both PrimeTime 24 and broadcasters in the Miami federal court case. This methodology uses a variation of the Longley-Rice methodology to determine whether individual homes are unserved. We seek comment on these approaches. Are there additional actions the Commission can and should take to make enforcement of the SHVA more effective?

43. Finally, we seek comment on the prospect that the industry will develop ''local-into-local'' technology to serve every community. The local-into-local concept means that satellite carriers would provide subscribers with the signals of their local broadcast network affiliates instead of signals from distant stations. If satellite carriers were allowed to retransmit a broadcast network station's signal into that station's local market, then the risks of damaging the goals of broadcast localism could be mitigated. Some satellite carriers have already developed limited plans for accomplishing local-into-local service. For example, EchoStar has a local-into-local option for unserved households in more than a dozen television markets, and Capitol Broadcasting Inc. of Raleigh, North Carolina, has reportedly developed the technology to deliver local-into-local service for most, if not all, television markets. We note that some interested parties have argued that a local-into-local extension of the compulsory license in the current copyright laws might obviate the need for Commission action in this area. The Commission, of course, lacks the statutory authority to create such an extension. However, section 335(a) of the Communications Act of 1934 instructs the Commission to ''examine the opportunities that the establishment of direct broadcast satellite service provides for the principle of localism under this Act, and the methods by which such

principle may be served through technological and other developments in, or regulation of, such service.'' If Congress adopted a local-into-local extension of the compulsory license, how would such a change affect the need for, and viability of, the proposals in this rulemaking? We seek comment on the feasibility—particularly the technical feasibility—of a local-into-local option and on a time frame for implementing this possible solution to the demands for satellite delivery of network station signals.

III. Paperwork Reduction Act

The requirements proposed in this Notice have been analyzed with respect to the Paperwork Reduction Act of 1995 (the ''1995 Act'') and would impose new and modified information collection requirements on the public. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (''OMB'') to take this opportunity to comment on the proposed information collection requirements contained in this Notice, as required by the 1995 Act. Public comments are due on or before 30 days from date of publication of this Notice in the **Federal Register**. OMB comments are due on or before 60 days from date of publication of this Notice in the **Federal Register**. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information would have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: None. This is a new collection.

Title: Satellite Delivery of Network Signals to Unserved Households for Purposes of the Satellite Home Viewer Act.

Type of Review: New collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 848. The proposed action in this NPRM applies to entities providing DBS service. According to Census Bureau data, there are 848 firms that fall under the category of Communications Services, Not Elsewhere Classified that could potentially fall into the DBS category.

Estimated Time Per Response: Two hours.

Frequency of Response: On occasion.

Total Annual Burden to Respondents: 2,000,000 hours. At this time the Commission provides broad estimates of the annual paperwork burden resulting from the proposed new and modified information collection requirements contained in this Notice. Based on comments received in this proceeding, the Commission will be in a position to provide more accurate paperwork burden estimates upon adoption of final rules. In our current estimates, we define a response to the proposed information collection requirements as including the burden to conduct signal strength measurements at individual households or by using predictive models; to report measurement findings to appropriate parties; and to keep records of such findings. We estimate that as many as one million responses will be typically be initiated in the course of a year. Each response is estimated to entail a burden of two hours.

1,000,000 responses x 2 hours each = 2,000,000 hours.

Total Annual Cost to Respondents: $500,000. Cost to respondents is defined as capital, start-up, operation and maintenance costs pursuant to the Paperwork Reduction Act of 1995. The DBS industry has conducted signal strength measurements and has reported the findings of such measurements for several years pursuant to requirements set forth by the Satellite Home Viewer Act; therefore the Commission foresees no additional capital or start-up costs as a result of proposals contained in this Notice. However, here we account for postage and stationery costs incurred by entities at an estimated 50 cents per response. 1,000,000 responses x 50 cents = $500,000.

Needs and Uses: The information gathered as part of Grade B signal strength tests, as proposed, will be used to indicate whether a consumers are ''unserved'' by over-the-air network signals. Parties using this information will include consumers, the Commission, and the satellite and broadcasting industries.

IV. Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (''RFA'') (5 CFR 603), the Commission has prepared this Initial Regulatory Flexibility Analysis (''IRFA'') of the possible significant economic impact on small entities by the policies and proposed action in this NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided above. The Commission will send a copy of this NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (''SBA'') and to Congress.

A. Need for, and Objective of, the NPRM

In this NPRM, the Commission responds to Petitions for Rulemaking filed by the National Rural Telecommunications Cooperative and EchoStar Communications Corporation requesting that the Commission address the methods for determining whether a household is ''unserved'' by network television stations for purposes of the 1988 Satellite Home Viewer Act (17 CFR 119).

B. Legal Basis

This NPRM is authorized under sections 1, 4(i), 4(j) of the Communications Act of 1934, as amended, 47 CFR 151, 154(i), and 154(j) and section 119(d)(10)(a) of the Copyright Act, 17 CFR 119(d)(10)(a).

C. Description and Estimate of the Number of Small Entities To Which the NPRM Will Apply

The RFA directs the Commission to provide a description of and, where feasible, and estimate of the number of small entities that will be affected by the proposed action. The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small business concern'' under section 3 of the Small Business Act. Under the Small Business Act, a small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. The proposed action in this NPRM will affect television broadcasting licensees and DBS operators.

Television Stations

The policies and proposed action in this NPRM will apply to television broadcasting licensees, and potential licensees of television service. The SBA defines a television broadcasting station that has no more than $10.5 million in annual receipts as a small business (Standard Industrial Code (''SIC'') 4833 (1996)). Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational, and other television stations. Also included

are establishments primarily engaged in television broadcasting and that produce taped television program materials. Separate establishments primarily engaged in producing taped television program materials are classified under SIC 7812 (Motion Picture and Video Tape Production) and SIC 7922 (Theatrical Producers and Miscellaneous Theatrical Services (producers of live radio and television programs). There were 1,509 television broadcasting stations operating in the nation in 1992. That number has remained fairly constant as indicated by the approximately 1,579 operating full power television broadcasting stations in the nation as of May 31, 1998. In addition, as of October 31, 1997, there were 1,880 low power television broadcasting (''LPTV'') broadcasting stations that may also be affected by our proposed rule changes. Given the nature of LPTV stations, we will presume that all LPTV's qualify as small entities. For 1992 the number of television broadcasting stations that produced less than $10.0 million in revenue was 1,155 establishments.

Thus, the proposed action will affect many of the approximately 1,574 television broadcasting stations; approximately 1,200 of those stations are considered small businesses. Given the nature of LPTV stations, we will presume that all LPTV's qualify as small entities. These estimates may overstate the number of small entities because the revenue figures on which they are based do not include or aggregate revenues from non-television affiliated companies.

In addition to owners of operating television broadcasting stations, any entity who seeks or desires to obtain a television broadcasting license may be affected by the proposed action contained in this item. The number of entities that may seek to obtain a television broadcasting license is unknown. We invite comment as to such number.

DBS

The Commission has not developed a definition of small entities applicable to geostationary or non-geostationary orbit fixed-satellite or DBS service applicants or licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified. This definition provides that a small entity is one with $11.0 million or less in annual receipts (SIC Code 4899). According to Census Bureau data, there are 848 firms that fall under the category of Communications Services, Not Elsewhere Classified that could potentially fall into the DBS category. Of those, approximately 775 reported annual receipts of $11 million or less and qualify as small entities. The proposed action in this NPRM applies to entities providing DBS service. Small businesses do not have the financial ability to become DBS licensees because of the high implementation costs associated with satellite services. Because this is an established service, however, with limited spectrum and orbital resources for assignment, we estimate that no more than fifteen entities will be Commission licensees providing these services. Therefore, because of the high implementation costs and the limited spectrum resources, we do not believe that small entities will be impacted by proposed action in this NPRM.

D. Description of Projected Reporting, Record-keeping, and Other Compliance Requirements

There may be reporting, record-keeping, and compliance requirements for television broadcasting stations and DBS operators in the form of testing, record-keeping, and reporting, if the Commission adopts any rule changes as a result of this NPRM. We solicit comments on how these projected requirements may be eliminated, reduced, or streamlined.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

In discussing the proposed action contained in this NPRM, we have attempted to minimize the burdens on all entities. We seek comment on the impact of our proposed action on small entities and on any possible alternatives that would minimize its impact on small entities.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rule Changes

None.

Ordering Clauses

It is ordered that, pursuant to sections 1, 4(i), 4(j) of the Communications Act of 1934, as amended, 47 CFR 151, 154(i), and 154(j); and section 119(d)(10)(a) of the Copyright Act, 17 CFR 119(d)(10)(a), notice is hereby given of proposed amendments to Part 73, in accordance with the proposals, discussions and statements of issues in this Notice of Proposed Rulemaking, and that comment is sought regarding such proposals, discussions and statements of issues. It is further ordered that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–32397 Filed 12–2–98; 12:21 pm]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–209; RM–9406]

Radio Broadcasting Services; De Ridder, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Willis Broadcasting Corporation, licensee of Station KEAZ(FM), Channel 269A, De Ridder, Louisiana, proposing the substitution of Channel 250A for Channel 269A at De Ridder and modification of the license for Station KEAZ(FM) accordingly. Coordinates for Channel 250A at De Ridder 30–52–43 and 93–17–25.

As the petitioner's modification proposal seeks an equivalent channel substitution, we will not accept competing expressions of interest in the use of Channel 250A at De Ridder, Louisiana.

DATES: Comments must be filed on or before January 19, 1999, and reply comments on or before February 3, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: John C. Trent, Esq., Putbrese Hunsaker & Trent, P.C., 100 Carpenter Drive, Suite 100, P.O. Box 217, Sterling, VA 20167–0217.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–209, adopted November 18, 1998, and released November 27, 1998. The

full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–32365 Filed 12–4–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 113098B]

New England Fishery Management Council; Public Meeting

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

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) has scheduled a 1-day meeting to take action on the Spiny Dogfish Fishery Management Plan (FMP).

DATES: The meeting will be held at 9:30 a.m. on Thursday, December 17, 1998.

ADDRESSES: The meeting will be held at the Sheraton Colonial Hotel, 427 Walnut Street, Wakefield, MA 01880; telephone (781) 245–9300. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1036; telephone (781) 231–0422.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone (781) 231–0422.

SUPPLEMENTARY INFORMATION: The Council intends to discuss and approve the FMP, which has been prepared jointly with the Mid-Atlantic Fishery Management Council.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice.

Special Accommodations

This meeting is 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 date.

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

Dated: December 1, 1998.

Gary C. Matlock,

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

[FR Doc. 98–32430 Filed 12–4–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 111998A]

Fisheries of the Northeastern United States; Northeast Multispecies Fishery, Atlantic Sea Scallop Fishery, and Atlantic Salmon Fishery; Fishery Management Plan (FMP) Amendments

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

ACTION: Amendment to a notice of availability of an omnibus amendment to FMPs; request for comments.

SUMMARY: On December 1, 1998, NMFS published a notice of availability (NOA) of an omnibus amendment that included Amendment 11 to the Northeast Multispecies FMP, Amendment 9 to the Atlantic Sea Scallop FMP, and Amendment 1 to the Atlantic Salmon FMP. The NOA described the Essential Fish Habitat (EFH) measures contained in the omnibus amendment. In addition to the EFH measures, Amendment 1 to the Atlantic Salmon FMP includes a discussion of an overfishing definition and an aquaculture framework adjustment process for Atlantic salmon. This notice informs the public that these additional measures are under review by the Secretary of Commerce (Secretary) and invites public comment.

DATES: Public comments must be received on or before February 1, 1999.

ADDRESSES: Comments on this amendment should be sent to Jon C. Rittgers, Acting Regional Administrator, One Blackburn Drive, Gloucester, MA 01930–2298. Please mark the outside of the envelope: ''Comments on Essential Fish Habitat Amendment.''

Copies of the amendment and the environmental assessment are available from Paul Howard, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1036.

FOR FURTHER INFORMATION CONTACT: Jonathan M. Kurland, Assistant Habitat Program Coordinator, 978–281–9204.

SUPPLEMENTARY INFORMATION: On December 1, 1998, NMFS published a notification in the **Federal Register** (63 FR 66110) announcing that the New England Fishery Management Council submitted for review and approval by the Secretary an omnibus amendment containing EFH provisions that would implement the requirements of section 303(a)(7) of the Magnuson-Stevens Fishery Conservation and Management Act. The omnibus amendment describes and identifies EFH for specified fisheries, discusses measures to address the effects of fishing on EFH, and identifies other actions for the conservation and enhancement of EFH. The amendment includes no new fishery management measures, so no regulations are proposed.

In addition to EFH information, Amendment 1 to the Atlantic Salmon FMP also contains information related to the overfishing definition for Atlantic salmon and an aquaculture framework adjustment process for the Atlantic Salmon FMP. Because the December 1, 1998 notice did not specifically indicate that these measures were included in Amendment 1 to the Atlantic Salmon FMP, this notice informs the public that these additional measures are under Secretarial review for approval, disapproval, or partial approval, and invites public comment. To be considered, comments must be received by February 1, 1999.

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

Dated: December 2, 1998.

Richard W. Surdi,

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

[FR Doc. 98–32532 Filed 12–3–98; 4:16 pm]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 63, No. 234

Monday, December 7, 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

Economic Research Service

Notice of Intent to Seek Approval to Collect Information

AGENCY: Economic Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the Economic Research Service's intention to request approval for collection of new information from State officials on the services, work slots, participants and expenditures of their Food Stamp Employment and Training (E&T) programs. These data will be used to assess changes in State Food Stamp E&T programs after implementation of the Balanced Budget Act of 1997 and will be compiled in a mandated report to Congress on ''State Use of Funds to Increase Work Slots for Food Stamp Recipients.''

DATES: Written comments on this notice must be received by February 5, 1999 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Requests for additional information or copies of the proposed information collection forms should be directed to David M. Smallwood, Deputy Director for Food Assistance Research, Food and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture, 1800 M Street NW, Room 2130, Washington, DC 20036–5831, 202–694–5466.

SUPPLEMENTARY INFORMATION:

Title: Report on State Use of Funds to Increase Work Slots for Food Stamp Recipients.

Type of Request: Approval to collect new informtion on State Food Stamp Employment and Training programs.

Abstract: The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 imposed work requirements and a three month time limit on able-bodied adults without dependents (ABAWDs) in the Food Stamp Program. In 1997, Congress included a provision in the Balanced Budget Act of 1997 (BBA) that had the intention of directing new funds to States to modify and expand the Food Stamp Employment and Training (E&T) program in ways that would allow more ABAWDs to meet the work requirements and maintain their food stamp benefits. The BBA provision significantly increased the funding for State Food Stamp E&T programs, allocated the Federal grant funds among States based on the number of ABAWDs in their caseload, and required States to set-aside 80 percent of the allocated grant funds to serve ABAWDs. In addition, the legislation mandated a report to Congress on State use of the new BBA funds. In order to meet the Congressional mandate, a data collection effort will need to be undertaken to obtain new information from State Food Stamp Agencies that is not available from existing State reports to the Food and Nutrition Service.

Information will be collected from all States and the District of Columbia through two methods. A telephone interview will be conducted with State food stamp directors and State E&T managers. The purpose of this interview is to collect descriptive information on the States' food stamp E&T programs. In up to five county-administered States, where counties run more autonomous programs and States do not compile Statewide information on their E&T programs, telephone interviews will also be conducted with E&T managers in three counties. The second type of data collection will involve mailing out a data collection form to be completed by a State E&T official identified by the State food stamp director. The purpose of this mail-out data collection form is to collect numerical data on E&T program slots, participants and costs. The only numerical data that will be collected in this study will be information not already collected by the USDA Food and Nutrition Service as part of State reporting requirements. In this way the burden will be relieved on State reporters and duplication of effort will be prevented.

Respondents: State and local governments.

Estimated Number of Respondents: 217

Estimates of Burden: The estimated reporting burden on each respondent type is as follows: (1) Telephone interviews with State food stamp directors will average 20 minutes; (2) telephone interviews with State Food Stamp Employment and Training program managers will average 40 minutes; (3) telephone interviews with selected county E&T managers will average 40 minutes; (4) for each State, completion of the mailed out data collection form will require designated State food stamp agency employees to spend an average of 8 hours compiling data and filling out the form and 20 minutes on the telephone to review the completed form with the researchers.

Estimated Total Annual Burden on Respondents: 486 hours.

Copies of the information to be collected can be obtained from David M. Smallwood, Deputy Director for Food Assistance Research, Food and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture, 1800 M Street NW, Room 2130, Washington, DC 20036–5831, 202–694–5466.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology. Comments may be sent to: David M. Smallwood, Deputy Director for Food Assistance Research, Food and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture, 1800 M Street NW, Room 2130, Washington, DC 20036–5831, 202–694–5466. All responses to this notice will be

summarized and included in the request of OMB approval. All comments will also become a matter of public record.

Dated: November 23, 1998.

Betsey Kuhn,

Director, Food and Rural Economics Division.

[FR Doc. 98–32411 Filed 12–4–98; 8:45 am]

BILLING CODE 3410–18–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Types and Quantities of Agricultural Commodities Available for Donation Overseas Under Section 416(b) of the Agricultural Act of 1949, as Amended, in fiscal Year 1999

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

SUMMARY: On November 25, 1998, the President of the Commodity Credit Corporation, who is the Under Secretary of Agriculture for Farm and Foreign Agricultural Services, determined that 9,500 metric tons of nonfortified nonfat dry milk in 25 kg domestic commercially-marked bags, 50,000 metric tons of corn, and wheat that may be acquired by the Commodity Credit Corporation (CCC) under its surplus removal operations are available for donation overseas under section 416(b) of the Agricultural Act of 1949, as amended, during fiscal year 1999.

FOR FURTHER INFORMATION CONTACT: Ira Branson, Director, CCC Program Support Division, FAS, USDA, (202) 720–3573.

Dated: November 20, 1998.

Christopher E. Goldthwait,

Vice President, CCC.

[FR Doc. 98–32410 Filed 12–4–98; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance of the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 USC Chapter 35)

Agency: National Telecommunications and Information Administration (NTIA).

Title: Telecommunications and Information Infrastructure Assistance Program (TIAAP) Reviewer Information Form.

Agency Form Number(s): None assigned.

OMB Approval Number: 0660–0010.

Type of Request: Regular Submission—Reinstatement.

Burden: 50 hours.

Number of Respondents: 130.

Avg. Hours Per Response: 18 minutes.

Needs and Uses: The title making appropriations for the Department of Commerce and related agencies in the Omnibus Consolidated and Emergency Supplemental Appropriations Bill for Fiscal Year 1999 (Pub. L. 105–277) includes provision allowing NTIA to make grants to public and nonprofit entities. In order to expedite the review of grant applications, NTIA will use this form to collect information from individuals interested in serving as external reviewers. Information collected will be used to process stipend payment and travel reimbursement.

Affected Public: Experts from state and local government, non-profit institutions, and the private sector.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Tim Fain, (202) 395–3561.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Tim Fain, OMB Desk Officer, Room 10236, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: December 1, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief, Information Officer.

[FR Doc. 98–32451 Filed 12–4–98; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Multi-Purpose Application.

Agency Form Number: BXA–748P.

OMB Approval Number: 0694–0088.

Type of Request: Extension of a currently approved collection of information.

Burden: 9,895 hours.

Average Time Per Response: 40 to 67 minutes per response.

Number of Respondents: 10,693 respondents.

Needs and Uses: This collection is required in compliance with U.S. export regulations. The information furnished by U.S. exporters provides the basis for decisions to grant licenses for export, reexport, and classifications of commodities, goods and technologies that are controlled for reasons of national security and foreign policy.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20230.

Dated: December 2, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–32452 Filed 12–4–98; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–602]

Brass Sheet and Strip From Germany: Postponement of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Extension of time limits for preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce is extending by 120 days the time limit of the preliminary results of the antidumping duty administrative review of the antidumping duty on brass sheet

and strip from Germany covering the period March 1, 1997, through February 28, 1998, since it is not practicable to complete this review within the time limits mandated by the Tariff Act of 1930, as amended.

EFFECTIVE DATE: December 7, 1998.

FOR FURTHER INFORMATION CONTACT: Magd Zalok or Gabriel Adler, AD/CVD Enforcement Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482–4162 and 482–1442, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR part 351 (April 1998).

Postponement of Preliminary Results of Review

On April 24, 1998, the Department initiated an administrative review of the antidumping duty order on brass sheet and strip from Germany, covering the period of March 1, 1997, through February 28, 1998. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 63 FR 20378 (April 24, 1998).

Section 751(a)(3)(A) of the Act requires the Department to make a preliminary determination in an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested. Per this requirement, the deadline for the preliminary results of this review would have been December 1, 1998. However, section 751(a)(3)(A) of the Act provides that when it is not practicable to complete the review within the specified time period, the Department may extend this time period by 120 days. Since the Department has determined that it is not practicable to issue the preliminary results of this review by December 1, 1998, the Department is extending the time limit for issuance of these results by 120 days. *See* Memorandum from Richard W. Moreland to Robert S. LaRussa, dated December 1, 1998.

In accordance with section 751(a)(3)(A) of the Act, we plan to issue the final results of this administrative review within 120 days after publication of the preliminary results.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: December 1, 1998.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 98–32434 Filed 12–4–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–806]

Carbon Steel Wire Rope from Mexico: 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 For Preliminary Results of Antidumping Duty Administrative Review.

EFFECTIVE DATE: December 7, 1998.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley or Maureen Flannery, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4106 or (202) 482–3020, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, codified at 19 CFR part 351, 62 FR 27295 (May 19, 1997).

Background

On March 31, 1998, the Department of Commerce (the Department) received requests from Aceros Camesa, S.A. de C.V. (Camesa) and from the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers (Committee) for an antidumping duty administrative review of carbon steel wire rod from Mexico. On April 24, 1998, the Department published its initiation of this antidumping duty administrative review covering the period of March 1, 1998 through February 28, 1998 (63 FR 20378).

Extension of Time Limits for Preliminary Results

Section 751(a)(3)(A) of the Act directs the Department to make a preliminary determination within 245 days for each administrative review. The section provides, however, that ''if it is not practicable to complete the review within the foregoing time, the administrative authority may extend that 245-day period to 365 days. . . .'' Because of the complexities enumerated in the Memorandum from Joseph A. Spetrini to Robert S. LaRussa, Extension of Time Limit for the Preliminary Results of Review of Steel Wire Rope from Mexico, dated November XX, 1998, it is not practicable to complete this review within the 245-day time limit.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limit for the preliminary results by 90 days to March 1, 1998.

Dated: November 24, 1998.

Joseph A. Spetrini,

Deputy Assistant Secretary for AD/CVD Enforcement III.

[FR Doc. 98–32444 Filed 12–4–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–301–602]

Certain Fresh Cut Flowers From Colombia: Extension of Time Limit of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results in the administrative review of the antidumping order on certain fresh cut flowers from Colombia, covering the period March 1, 1997, through February 28, 1998, since it is not practicable to complete the review within the time limits mandated by section 751(a)(3)(A) of the Tariff Act of 1930, as amended, 19 U.S.C. 1675 (a)(3)(A).

EFFECTIVE DATE: December 7, 1998.

FOR FURTHER INFORMATION CONTACT: Marian Wells or Rosa Jeong, Import Administration, U.S. Department of Commerce, Room 3099, 14th and Constitution Avenue, N.W., Washington, DC, 20230; telephone (202) 482–6309 or 482–3853, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce's (''the Department's'') regulations are to the current regulations at 19 CFR part 351, 62 FR 27296 (May 19, 1997).

SUPPLEMENTARY INFORMATION:

Background

On April 21, 1998, the Department initiated an administrative review of the antidumping duty order on Fresh Cut Flowers from Colombia (''Flowers''), covering the period March 1, 1997, through February 28, 1998 (63 FR 19709). Originally, the preliminary determination was due on December 1, 1998 and the final determination was due within 120 days after the publication of the preliminary determination, in accordance with the requirements in section 751(a)(3)(A) of the Act (*see* below).

Postponement of the Preliminary Results

Section 751(a)(3)(A) of the Act requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested. However, if it is not practicable to issue the preliminary results in 245 days, section 751(a)(3)(A) of the Act allows the Department to extend this time period to 365 days.

We determine that it is not practicable to issue the preliminary results within 245 days because of the large number of respondents and the complexity of the legal and methodological issues in this review.

Accordingly, the deadline for issuing the preliminary results of this review is now no later than February 10, 1999. The deadline for issuing the final results of this review will be 120 days from the publication of the preliminary results.

This extension is in accordance with section 751 (a)(3)(A) of the Act.

Dated: November 25, 1998.

Richard W. Moreland,

Deputy Assistant Secretary, AD/CVD Enforcement, Group I.

[FR Doc. 98–32441 Filed 12–4–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–703]

Granular Polytetrafluoroethylene Resin From Italy: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Antidumping Duty Administrative Review.

SUMMARY: On September 29, 1998, the Department of Commerce initiated an administrative review of the antidumping duty order on granular polytetrafluoroethylene resin from Italy. This review was requested by Ausimont SpA, a manufacturer/exporter of subject merchandise, for the period August 1, 1997 through July 31, 1998. Ausimont SpA filed a timely withdrawal of its request for this review on November 12, 1998. Because no other interested party requested a review, we are rescinding this review.

EFFECTIVE DATE: December 7, 1998.

FOR FURTHER INFORMATION CONTACT: Magd Zalok or Gabriel Adler, Office of AD/CVD Enforcement, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4162 and (202) 482–1442, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce (the Department) regulations refer to the regulations codified at 19 CFR part 351 (1998).

Background

On August 31, 1998, Ausimont SpA (Ausimont) requested that the Department conduct an administrative review of granular polytetrafluoroethylene (PTFE) resin from Italy for the period August 1, 1997 through July 31, 1998. No other interested party requested that the Department conduct an administrative review.

On September 29, 1998, the Department published in the **Federal Register** a notice of initiation of administrative review with respect to Ausimont. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part;* 63 FR 51893 (September 29, 1998). Subsequently, on November 12, 1998, Ausimont filed a letter with the Department withdrawing its request for an administrative review.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. There were no requests for administrative review from other interested parties, and the only party affected by the withdrawal request is the party making the timely request. Given that the review has not progressed substantially and there would be no undue burden on the parties or the Department, the Department has determined that it is reasonable to accept respondent's withdrawal. Therefore, the Department is rescinding this review.

This rescission of the administrative review and notice are in accordance with section 751 of the Act and 19 CFR 351.213(d).

Dated: November 27, 1998.

Richard W. Moreland,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 98–32440 Filed 12–4–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–807]

Polyethylene Terephthalate Film, Sheet, and Strip From Korea; Postponement of Preliminary Results of Antidumping Duty New Shipper Administrative Review and Partial Rescission of Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit and partial rescission of review.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the new shipper administrative review of the antidumping duty order on polyethylene terephthalate, film, sheet, and strip (PET film) from Korea. The Department is also rescinding the

review with respect to Kohap, Ltd. (Kohap). The review covers two manufacturers/exporters of the subject merchandise and the period June 1, 1997 through May 31, 1998.

EFFECTIVE DATE: December 7, 1998.

FOR FURTHER INFORMATION CONTACT:

Michael J. Heaney or John Kugelman, Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–4475 or 482–0649, respectively.

Postponement of Preliminary Results of Review and Rescission of Review With Respect To Kohap

On July 16, 1998, the Department initiated this new shipper review of the antidumping duty order on PET film from Korea, manufactured by H.S. Industries and Kohap, Ltd. (63 FR 38371). The current deadline for the preliminary results is January 12, 1999. We have determined that this review is extraordinarily complicated, and that we are unable to complete it within the original timeframe. (See Memorandum to the File dated November 24, 1998.)

Accordingly, the deadline for issuing the preliminary results is now due no later than May 12, 1999. The deadline for issuing the final results will be no later than 90 days from the publication of the preliminary results.

On August 21, 1998, Kohap withdrew its request for a new shipper administrative review. Accordingly, we are rescinding this new shipper review with respect to Kohap. Upon publication of this notice in the **Federal Register**, we will instruct the U.S. Customs Service to require cash deposits on all shipments of PET film manufactured by Kohap and entered or withdrawn from warehouse.

This notice is in accordance with Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)(2)(B)(iv)).

Dated: November 29, 1998.

Joseph A. Spetrini,

Deputy Assistant Secretary for AD/CVD Enforcement, Group III.

[FR Doc. 98–32442 Filed 12–4–98; 8:45 am]

BILLING CODE 3510–05–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–807]

Polyethylene Terephthalate, Film, Sheet, and Strip From Korea; Postponement of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit.

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 polyethylene terephthalate film, sheet, and strip from Korea. The review covers two manufacturers/exporters of the subject merchandise and the period June 1, 1997 through May 31, 1998.

EFFECTIVE DATE: December 7, 1998.

FOR FURTHER INFORMATION CONTACT:

Michael J. Heaney or John Kugelman, Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–4475 or 482–0649, respectively.

Postponement of Preliminary Results of Review

On July 28, 1998, the Department initiated this administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip from Korea. (63 FR 40258). The current deadline for the preliminary results is March 2, 1999. We determine that it is not practicable to complete this review within the original time frame. (See Memorandum to the File dated November 24, 1998.)

Accordingly, the deadline for issuing the preliminary results of this review is now due no later than June 30, 1999. The deadline for issuing the final results of this review will be no later than 120 days from the publication of the preliminary results.

This extension is in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (19 U.S.C. 1675 (a)(3)(A)).

Dated: November 21, 1998.

Joseph A. Spetrini,

Deputy Assistant Secretary for AD/CVD Enforcement, Group III.

[FR Doc. 98–32443 Filed 12–4–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–827]

Static Random Access Memory Semiconductors From Taiwan; Initiation of New Shipper Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce has received a request to conduct a new shipper administrative review of the antidumping duty order on static random access memory semiconductors from Taiwan. In accordance with 19 CFR 351.214(d), we are initiating this administrative review.

EFFECTIVE DATE: December 7, 1998.

FOR FURTHER INFORMATION CONTACT:

Shawn Thompson or Sergio Gonzalez, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone (202) 482–1776 or 482–1779, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce (the Department) regulations are to the provisions codified at 19 CFR part 351 (62 FR 27295, May 19, 1997).

SUPPLEMENTARY INFORMATION:

Background

The Department received a timely request from Giga Semiconductor Inc. (GSI Technology), in accordance with 19 CFR 351.214(d), for a semiannual new shipper review of the antidumping duty order on certain static random access memory semiconductors (SRAMS) from Taiwan, which has an October semiannual anniversary date. GSI Technology (the respondent) has certified in its October 15, 1998, and its November 20, 1998, submissions to Department that it did not export SRAMS to the United States for sale during the period of investigation (POI) and that it is not affiliated with any exporter or producer which did export SRAMS for sale during the POI. According to 19 CFR 351.214(b)(2)(i), a person may request a new shipper review if the person did not export

subject merchandise to the United States during the POI. GSI Technology's new shipper request indicates that it did export subject merchandise during the POI. However, GSI Technology certified that such exports were samples used for customer qualification purposes and were never sold. Because GSI Technology's exports were never sold, we have determined that they were not ''exports'' within the meaning of 19 CFR 351.214(b)(2)(i). Thus, GSI Technology qualifies as a new shipper. However, GSI Technology's claim that the merchandise it exported during the POI was never sold is subject to verification.

In accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(b), and based on information on the record, we are initiating the new shipper review as requested.

Initiation of Review

In accordance with section 751(a)(2)(B)(ii) of the Act and 19 CFR 351.214(d)(1), we are initiating a new shipper review of the antidumping duty order on SRAMS from Taiwan. Under section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i), the Secretary will issue preliminary results of this review within 180 days after the date on which the review is initiated and will issue the final results of the review within 90 days after issuance of the preliminary result. In accordance with our practice, all other provisions of 19 CFR 351.214 will apply to GSI Technology throughout the duration of this new shipper review.

Antidumping duty proceeding	Period to be reviewed
Taiwan: Static Random Access Memory Semiconductors, A–583–827 Giga Semiconductor Inc	10/01/97–09/30/98

We will instruct the Customs Service to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by the above-listed company. This action is in accordance with 19 CFR 351.214(e) and (j)(3).

Interested parties that need access to the proprietary information in this new shipper review should submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

This initiation and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214(d).

Dated: November 30, 1998.

Holly Kuga,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 98–32437 Filed 12–4–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

[C–533–816]

Preliminary Negative Countervailing Duty Determination: Elastic Rubber Tape From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 7, 1998.

FOR FURTHER INFORMATION CONTACT: Vincent Kane or Suresh Maniam, Office I, AD/CVD Enforcement, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–2815 or 482–0176, respectively.

Preliminary Determination

The Department of Commerce preliminarily determines that no countervailable subsidies are being provided to producers and exporters of elastic rubber tape from India.

Petitioners

The petition in this investigation was filed on August 18, 1998. The petitioners are Fulflex, Inc., Middletown, Rhode Island; Elastomer Technologies Group, Inc., Stuart, Virginia; and RM Engineered Products, Inc., North Charleston, South Carolina (''the petitioners'').

Case History

Since the publication of the notice of initiation in the **Federal Register** (see Notice of Initiation of Countervailing Duty Investigation: Elastic Rubber Tape from India, 63 FR 49549 (September 16, 1998)), the following events have occurred. On September 18, 1998, and October 15, 1998, we issued countervailing duty questionnaires to the Government of India (''GOI'') and the only known producer and exporter of the subject merchandise, Garware Elastomerics, Ltd. (''GEL''). On November 3 and November 13, 1998, we issued supplemental questionnaires to GEL and the GOI, respectively.

We received questionnaire responses from the GOI and GEL on November 9, 1998, and a supplemental questionnaire response from GEL on November 16, 1998.

On October 30, 1998, we postponed the preliminary determination of this investigation until November 30, 1998. (See Notice of Postponement of Time Limit for Countervailing Duty Investigation: Elastic Rubber Tape from India, 63 FR 601762.)

Period of Investigation

The period for which we are measuring subsidies (''the POI'') is GEL's 1997 fiscal year from April 1, 1997 through March 31, 1998.

Scope of Investigation

For purposes of this investigation, the product covered is elastic rubber tape. Elastic rubber tape is defined as vulcanized, non-cellular rubber strips, of either natural or synthetic rubber, 0.006 inches to 0.100 inches (0.15 mm to 2.54 mm) in thickness, and ⅛ inches to 1⅝ inches (3 mm to 42 mm) in width. Such product is generally used in swim wear and underwear.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') at subheading 4008.21.00. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (''URAA''), effective January 1, 1995 (''the Act''). The Department of Commerce (''the Department'') is conducting this investigation in accordance with section 701 of the Act. All other references are to the Department's regulations codified at 19 CFR Part 351 (1997), unless otherwise indicated.

Injury Test

Because India is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, the International Trade Commission (''ITC'') is required to determine whether imports of the subject merchandise from

India materially injure, or threaten material injury to, a U.S. industry. On October 15, 1998, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is being materially injured, or threatened with material injury, by reason of imports of the subject merchandise from India (see 63 FR 55407 (October 15, 1998)).

Affiliated Company

In accordance with section 771(33) of the Act, the Department considers the following persons to be affiliated or affiliated persons: (1) Members of a family; (2) any officer or director of an organization and such organization; (3) partners; (4) employer and employee; (5) any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting stock or shares of any organization and such organization; (6) two or more persons directly or indirectly controlling, controlled by, or under common control with, any person; and (7) any person who controls any other person and such other person.

In cases when a company under investigation is affiliated with another company, the Department will require the affiliated company to respond to a countervailing duty questionnaire, if (1) that company produces the subject merchandise or (2) that company is related to the company under investigation, and financial transactions on terms inconsistent with commercial considerations have occurred between them. Normally, we consider companies to be related, if they prepare consolidated financial statements or if one of the companies has at least 20 percent ownership in the other. (See Final Affirmative Countervailing Duty Determination: Certain Pasta (''Pasta'') from Italy, 61 FR 30288, 30290 (June 14, 1996).) If an affiliated company, which is related to the company under investigation and has had financial transaction on terms inconsistent with commercial considerations with that company, is found to have benefitted from subsidies during the POI, the Department will attribute a portion of these subsidies to the company under investigation.

In this case, based on proprietary information in GEL's November 9, 1998 questionnaire response and its November 16, 1998 supplementary questionnaire response, we have preliminarily determined that GEL is related to its affiliate through direct and indirect stock ownership and through shared board members. In addition, GEL reported that financial transactions have taken place between the two companies.

During GEL's start up in 1995, the affiliated company supplied technical advice to GEL. It has also provided loans and loan guarantees to GEL. In addition, the affiliated company provided certain machinery and equipment to GEL during its start up year and, on limited occasions, certain inputs to production. GEL claims that the machinery, inputs to production, loans and technical advise have been provided to it on market terms and, in support of its claim, has referred to an annexure to its 1997 audited financial statements. In this annexure, the auditors stated that the prices and terms for GEL purchases and sales of goods, materials, and services are reasonable based on the prices prevailing in the market. The auditors qualify this statement, however, indicating that it does not apply to those goods, materials, and services for which comparable quotations were not available because of the specialized nature of the goods, materials, and services. Regarding the loans and loan guarantees received by GEL, the auditors stated that the interest rate and other terms on loans from companies and other parties were not prejudicial to the interest of GEL.

Based on the auditors' statements and other information currently on the record, we are unable to preliminarily conclude that the financial transactions between GEL and its affiliate are on terms consistent with commercial considerations. In the case of goods, materials, and services, the auditors' statement applies only to those purchases for which comparable products could be found in the market place. In the case of the loans, the auditors' statement may be suggesting that the loans to GEL were provided on favorable terms to the company. Therefore, we are currently gathering additional information about these financial transactions. Once this information has been obtained and, subject to verification, we will determine whether they were on terms inconsistent with commercial considerations. If we find these transactions to be inconsistent with commercial considerations, we will request that the affiliated company respond to a countervailing duty questionnaire and, if appropriate, attribute a portion of any subsidies that it may have received to GEL in calculating a subsidy rate for the final determination.

Critical Circumstances

The petitioners have alleged that critical circumstances within the meaning of section 703(e) of the Act exist with respect to the subject merchandise. For critical circumstances to exist, there must be massive imports of the subject merchandise over a relatively short period, and the company must have received a countervailable subsidy, which is inconsistent with the Subsidies Agreement. In this investigation, GEL has responded that it has not used nor benefitted from any of the programs under investigation. Therefore, we have preliminarily found no subsidies which are inconsistent with the Subsidies Agreement. On this basis, we preliminarily determine that critical circumstances do not exist in this investigation. However, because of the outstanding affiliation issue, we will continue to gather import statistics in the event that subsidies inconsistent with the Subsidies Agreement may be identified later in this investigation.

Programs Preliminarily Determined To Be Not Used

Based upon the information provided in the responses, we determine that GEL did not apply for or receive benefits under the following programs during the POI:

A. *Passbook/Duty Entitlement Passbook Scheme*
B. *Export Promotion Capital Goods Scheme*
C. *Export Processing Zones/Export Oriented Units Programs*
D. *Income Tax Exemption Scheme*
E. *Pre-Shipment Export Financing*
F. *Post-Shipment Export Financing*
G. *Import Mechanism (Sale of Import Licenses)*
H. *Exemption of the Interest Tax on Export Credits*
I. *Rediscounting of Export Bills Abroad*
J. *Programs Operated by the Small Industries Development Bank of India*
K. *Special Imprest Licenses*
L. *Market Development Assistance*
M. *Special Benefits to Export and Trading Houses and Super Star Trading Houses*
N. *Duty Drawback on Excise Taxes*
O. *Pre-Shipment Export Financing in Foreign Currency*
P. *Preferential Freight Rates*

Verification

In accordance with section 782(i) of the Act, we will verify the information submitted by respondent prior to making our final determination.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and nonproprietary

information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary, Import Administration.

If our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Public Comment

In accordance with 19 CFR 351.310, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. The hearing will tentatively be held 57 days from the date of publication of the preliminary determination at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, N.W., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing. In addition, six copies of the business proprietary version and three copies of the nonproprietary version of the case briefs must be submitted to the Assistant Secretary no later than 50 days from the date of publication of the preliminary determination. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Six copies of the business proprietary version and three copies of the nonproprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than 55 days from the date of publication of the preliminary determination. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal briefs. Written arguments should be submitted in accordance with 19 CFR 351.309 and will be considered if received within the time limits specified above.

This determination is issued and published in accordance with pursuant to sections 703(f) and 777(i)(1) of the Act.

Dated: November 30, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–32436 Filed 12–4–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–351–829]

Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil: Postponement of Time Limit for Countervailing Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of postponement of time limit for preliminary results of countervailing duty investigation

SUMMARY: The Department of Commerce is extending the time limit of the preliminary determination in the countervailing duty investigation of hot-rolled flat-rolled carbon-quality steel products from Brazil because we deem this investigation to be extraordinarily complicated, and determine that additional time is necessary to make the preliminary determination.

EFFECTIVE DATE: December 7, 1998.

FOR FURTHER INFORMATION CONTACT: Kathleen Lockard or Javier Barrientos, Office of CVD/AD Enforcement VI, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act.

Postponement

On October 15, 1998, the Department of Commerce (''the Department'') initiated the countervailing duty investigation of hot-rolled flat-rolled carbon-quality steel products from Brazil. See Initiation of Countervailing Duty Investigation: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil, 63 FR 56623 (October 22, 1998). The preliminary determination currently must be issued by December 21, 1998. Respondents have indicated that they will be cooperating in the investigation. In addition, we are investigating several complex alleged countervailable subsidy practices. Accordingly, as detailed in the December 1, 1998, Memorandum to Robert S. LaRussa, Assistant Secretary for Import Administration (on file in the public file of the Central Records Unit, Room B–099 of the Department of Commerce), we deem this investigation to be extraordinarily complicated, and determine that additional time is necessary to make the preliminary determination. Therefore, pursuant to section 703(c)(1) of the Tariff Act of 1930, as amended (''the Act''), we are postponing the preliminary determination in this investigation to no later than January 25, 1999.

This notice is published pursuant to section 703(c)(2) of the Act.

Dated: December 1, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–32435 Filed 12–4–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–412–811]

Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom: Postponement of Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limits for Preliminary Results of Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce is extending by no longer than 120 days the time limit of the preliminary results of the administrative review of the countervailing duty order on certain hot-rolled lead and bismuth carbon steel products from the United Kingdom (C–412–811), covering the period January 1, 1997, through December 31, 1997, since it is not practicable to complete this review within the time limits mandated by the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)(3)(A)).

EFFECTIVE DATE: December 7, 1998.

FOR FURTHER INFORMATION CONTACT: Gayle Longest and Chris Cassel, Antidumping Duty and Countervailing Duty Enforcement, Group II, Office Six, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482–3338 and 482–4847, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's regulations are to the current regulations as codified at 19 CFR 351 (1998).

Background

On April 24, 1998, the Department of Commerce (''the Department'') initiated an administrative review of the countervailing duty order on certain hot-rolled lead and bismuth carbon steel products from the United Kingdom (''UK''), covering the period January 1, 1997, through December 31, 1997 (63 FR 20378). In our notice of initiation, we stated our intention to issue the final results of this review no later than March 31, 1998. The preliminary results of review are currently due no later than December 1, 1998. Due to the complexity of the legal and methodological issues presented by this review, the Department has determined that it is not practicable to complete this review within the time limits mandated by the Act (19 U.S.C. 1675 (a)(3)(A)).

Postponement of Preliminary Results of Review

Section 751(a)(3)(A) of the Act requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) allows the Department to extend this time period to a maximum of 365 days and 180 days, respectively.

We determine that it is not practicable to complete the preliminary results this review within the original time frame. See Memorandum from Holly A. Kuga to Robert S. LaRussa, ''Extension of Preliminary Results: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom (C–412–811)'', dated November 27, 1998.

The deadline for issuing the preliminary results of this review is now no later than March 31, 1999, which is the full amount of time the Department can extend the preliminary results under section 751(a)(3)(A) of the Act. The deadline for issuing the final results of this review will be no later than 120 days from the publication of the preliminary results.

This extension is in accordance with section 751(a)(3)(A) of the Act (19 U.S.C. 1675 (a)(3)(A)).

Dated: November 27, 1998.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 98–32439 Filed 12–4–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–502]

Certain Welded Carbon Steel Pipes and Tubes and Welded Carbon Steel Line Pipe From Turkey: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limits of Preliminary Results of Reviews.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the administrative reviews of the countervailing duty order on certain welded carbon steel pipes and tubes and welded carbon steel line pipe from Turkey. The reviews cover two manufacturers/exporters and the period January 1, 1997 through December 31, 1997.

EFFECTIVE DATE: December 7, 1998.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Eric B. Greynolds, Office of CVD/AD 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) 482–3692 or (202) 482–6071, respectively.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete these reviews 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 Memorandum to Robert S. LaRussa, dated November 25, 1998, which is a public document on file in the Central Records Unit. The deadline for the final results of these reviews will continue to be 120 days after publication of the preliminary results.

This extension is in accordance with section 751(a)(3)(A) of the Act (19 U.S.C. 1675(a)(3)(A)).

Dated: November 25, 1998.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 98–32438 Filed 12–4–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE (DOC)

National Oceanic and Atmospheric Administration (NOAA)

Cooperative Program for Operational Meteorology, Education, and Training (COMET)

AGENCY: National Weather Service (NWS).

ACTION: Notice of Intent to Issue Notice of Noncompetitive Financial Assistance Award.

SUMMARY: NOAA issues this notice to announce its fiscal year 1999 plan to continue its financial support of the COMET Cooperative Agreement sponsored by the NWS. The COMET program, which is part of the University Corporation for Atmospheric Research (UCAR), establishes scientific training in meteorology for Federal agencies, the private sector, and universities; expedites the transfer of scientific knowledge; provides for formal collaborative research agreements between the NWS and participating universities and other groups; and finds innovative ways to enhance the performance of weather forecasters and improve the utilization of weather products by the public.

FOR FURTHER INFORMATION CONTACT: LeRoy Spayd, Chief, Science and Training Core, Office of Meteorology, NWS, Room 13308, 1325 East-West Highway, Silver Spring, Maryland 20910. Telephone: 301–713–1970 x 194. E-mail: leroy.spayd@noaa.gov.

SUPPLEMENTARY INFORMATION: The COMET cooperative agreement represents a close link between NOAA staff and universities, enabling the

participating university staff, students, and NWS operational staff to share observations, interpretations, and theory of the complex atmospheric circulations, which are now observable with new information obtained through the modernization of the NWS. A Memorandum of Agreement (MOA) exists between UCAR and NOAA although no financial assistance is provided through the MOA. The research is currently funded by a cooperative agreement. The period of the cooperative agreement starting with the fiscal year 1999 funding cycle will be for 3 years.

Subject to the availability of funds, NOAA intends to continue support to the COMET program during the fiscal year 1999 funding cycle. The COMET program is a cooperative agreement between the NWS and the UCAR, which represents all universities with meteorology and oceanographic graduate and undergraduate programs. We believe UCAR is the only entity which can draw on all of the talent of the participating universities to provide the programs needed by the Federal and university meteorological community.

NOAA does not intend to establish or fund new cooperative agreements at this time. This notice is not a solicitation for proposals.

Catalogue of Federal Domestic Assistance: The NWS COMET program is listed in the Catalogue of Federal Domestic Assistance under number 11.467, Meteorologic and Hydrologic Modernization Development.

Classification: This action has been determined not to be significant for purposes of E.O. 12866.

Dated: December 1, 1998.

John J. Kelly, Jr.,

Assistant Administrator for Weather Services.

[FR Doc. 98–32450 Filed 12–4–98; 8:45 am]

BILLING CODE 3510–KE–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120198A]

Marine Mammals

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

ACTION: Request to transfer a non-releasable rehabilitated marine mammal.

SUMMARY: Notice is hereby given that the Marine Mammal Care Center at Fort MacArthur, 3601 South Gaffey Street, San Pedro, CA 90731, has requested authorization to transfer a non-releasable rehabilitated California sea lion (*Zalophus californianus*) to Gabriel J. Kerschner, Wild Things, Inc., 1211 Ponderosa Way, Weimar, CA 95736, for purposes of public display.

DATES: Written or telefaxed comments must be received on or before January 6, 1999.

ADDRESSES: The authorization request and related documents are available for review upon written request or by appointment in the following office:

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289).

Written comments on this request should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910.

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: Ann Hochman, 301/713–2289.

SUPPLEMENTARY INFORMATION: The Marine Mammal Care Center is requesting authorization to transfer one female California sea lion from unreleasable beached and stranded stock for the purpose of public display, as authorized by the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The permanent retention for public display purposes of a beached or stranded marine mammal taken for the purpose of rehabilitation under section 109(h) of the MMPA must be authorized by NMFS before such animals may be retained by the rehabilitating facility, transported domestically to a public display facility, or exported to another facility for public display purposes, in accordance with applicable MMPA requirements.

In order to obtain any marine mammal for public display purposes, the recipient must meet the following three public display criteria: (1) Offer a program for education or conservation purposes that is based on professionally recognized standards of the public display community; (2) be registered or hold a license issued under 7 U.S.C. 2131 *et seq.*, ie., from the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture; and (3) maintain facilities for the public display of marine mammals that are open to the public on a regularly scheduled basis and to which access is not limited or restricted other than by charging of an admission fee.

Wild Things, Inc., has an exhibitor's license, No. 93–C–0382, issued by APHIS under the Animal Welfare Act (AWA). However, Wild Things, Inc., does not currently maintain marine mammals. The care and maintenance of captive marine mammals must adhere to the requirements of the AWA. Consequently, a copy of the request is also being sent to APHIS.

Wild Things, Inc., is open to the public on the first Saturday of each month with access that is not limited or restricted other than by charging an admission fee, and will offer an educational program based upon the standards of the American Association of Zoos and Aquariums. Wild Things, Inc., plans to add this marine mammal to its outreach program to local school assembly programs. Transportation associated with these assembly programs will be conducted according to APHIS standards under the AWA. Also, Wild Things, Inc., will be required to submit to NMFS a transport notification 15 days in advance of any proposed transport, as required under section 104(c) of the MMPA.

Dated: December 1, 1998.

Art Jeffers,

Acting Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–32431 Filed 12–4–98; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Applications of the New York Mercantile Exchange for Designation as a Contract Market in PJM Electricity Futures and Options, Submitted Under 45-Day Fast Track Procedures

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of proposed terms and conditions for applications for contract market designation.

SUMMARY: The New York Mercantile Exchange (NYMEX or Exchange) has applied for designation as a contract market in PJM (Pennsylvania-Maryland-New Jersey) electricity futures and

option contracts. The proposals were submitted under the Commission's 45-day Fast Track procedures. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before December 22, 1998.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to NYMEX PJM electricity futures and option contracts.

FOR FURTHER INFORMATION, CONTACT: Please contact Joseph Storer of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581, telephone (202) 418–5282. Facsimile number: (202) 418–5527. Electronic mail: jstorer@cftc.gov.

SUPPLEMENTARY INFORMATION: The proposed designation applications were submitted pursuant to the Commission's Fast Track procedures for streamlining the review of futures contract rule amendments and new contract approvals (62 FR 10434). Under those procedures, the proposals, absent any contrary action by the Commission, may be deemed approved at the close of business on January 11, 1999, 45 days after receipt of the proposals. In view of the limited review period provided under the Fast Track procedures, the Commission has determined to publish for public comment notice of the availability of the terms and conditions for 15 days, rather than 30 days as provided for proposals submitted under the regular review procedures.

Copies of the proposed terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. Copies can be obtained through the Office of the Secretariat by mail at the above address, by phone at (202) 418–5100, or via the internet on the CFTC website at 222.cftc.gov under ''What's New & Pending''.

Other materials submitted by the NYMEX in support of the proposals may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1997)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposals, or with respect to other materials submitted by the NYMEX, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on December 1, 1998.

Steven Manaster,

Director.

[FR Doc. 98–32403 Filed 12–4–98; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 5, 1999.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *Pat—Sherrill@ed.gov*, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 1, 1998.

Kent H. Hannaman,

Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision.

Title: Federal Family Education Loan (FFEL) Program Loan Deferment Applications.

Frequency: Annually.

Affected Public: Individuals or households.

Reporting and Recordkeeping Burden:
Responses: 1,148,818.
Burden Hours: 183,811.

Abstract: These forms will serve as the means of collecting the information necessary to determine whether a FFEL borrower qualifies for a specific type of loan deferment.

[FR Doc. 98–32368 Filed 12–4–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 6, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Werfeld@al.eop.gov*. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *PatSherrill@ed.gov*, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: December 1, 1998.

Kent H. Hannaman,

Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer.

Office of Postsecondary Education

Type of Review: Extension.
Title: Student Assistance General Provisions—Subpart I—Immigration Status Confirmation.
Frequency: On occasion.
Affected Public: Businesses or other for-profits; Not-for-profit institutions.
Reporting and Recordkeeping Burden:
Responses: 7,310.
Burden Hours: 23,026.
Abstract: Collection of this information used for immigration status confirmation reduces the potential of fraud and abuse caused by ineligible aliens receiving Federally subsidized student financial assistance under Title IV of the Higher Education Act (HEA) of 1965, as amended. The respondent population is comprised of 7,310 postsecondary institutions who participate in administration of the Title IV, HEA programs.

[FR Doc. 98–32367 Filed 12–4–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.287]

21st Century Community Learning Centers; Notice Inviting Applications for New Awards for Fiscal Year 1999

Purpose of program: The 21st Century Community Learning Centers Program was established by Congress to award grants to rural and inner-city public schools, or consortia of such schools, to enable them to plan, implement, or expand projects that benefit the educational, health, social services, cultural and recreational needs of the community. School-based community learning centers can provide a safe, drug-free, supervised and cost-effective after-school, weekend or summer haven for children, youth and their families.

Eligible Applicants: Only rural or inner-city public elementary or secondary schools, consortia of those schools, or LEAs applying on their behalf, are eligible to receive a grant under the 21st Century Community Learning Centers Program. An LEA considering serving more than one school is encouraged to submit a consortium application on their behalf. Applicants must demonstrate that they meet the statutory program purpose as being either a ''rural'' or ''inner-city'' school or a consortium of such schools.

Applications available: December 3, 1998.

Deadline for Transmittal of Applications: March 1, 1999.

Deadline for intergovernmental review: May 1, 1999.

Available funds: $100 million.

Estimated range of awards: $35,000—$2,000,000, depending on the number of Centers included in each grant application.

Estimated average size of awards: $375,000, for a grant that will support 3 Centers. The average funding for a single Center is $125,000.

Estimated number of awards: 275—300, but the actual number will depend on how many awards will assist multiple Centers.

Project period: Up to 36 months. Please note that all applicants for multi-year awards are required to provide detailed budget information for the total grant period requested. The Department will negotiate at the time of the initial award the funding levels for each year of the grant award.

Note: The Department is not bound by any estimates in this notice.

Applicable regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, and 86, and (b) the regulations in 34 CFR part 299.

Priorities

The Absolute Priority and Competitive Priority 1 in the notice of final priorities for this program published in the **Federal Register** on December 2, 1997 (62 FR 63773) and repeated below, apply to this competition. In addition, the Secretary gives preference to applications that

meet Competitive Priority 2 (34 CFR 75.105(c)(2)(ii) and 34 CFR 299.3(a)). The Secretary selects an application that meets Competitive Priority 2 over an application of comparable merit that does not meet this competitive priority.

Absolute Priority

Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the absolute priority in the next paragraph. The Secretary funds under this competition only applications that meet this absolute priority.

Activities To Expand Learning Opportunities

The Secretary funds only those applications for 21st Century Community Learning Centers grants that include, among the array of services required and authorized by the statute, activities that offer significant expanded learning opportunities for children and youth in the community and that contribute to reduced drug use and violence.

Competitive Priorities

Under 34 CFR 75.105(c)(2)(i), the Secretary gives preference to applications that meet one or both of the two competitive priorities in the next two paragraphs.

Competitive Priority 1—Projects designed to assist students to meet or exceed State and local standards in core academic subjects such as reading, mathematics or science, as appropriate to the needs of the participating children. The Secretary awards up to five (5) points for projects that address this priority. These points are in addition to the 100 points an application may earn under the selection criteria that will be included in the application package.

Competitive Priority 2—Projects that will use a significant portion of the program funds to address substantial problems in an Empowerment Zone, including a Supplemental Empowerment Zone, or an Enterprise Community designated by the United States Department of Housing and Urban Development or the United States Department of Agriculture.

Note: A list of areas that have been designated as Empowerment Zones and Enterprise Communities is published as an appendix to this notice.

Supplementary Information: The 21st Century Community Learning Centers Program is authorized under Title X, Part I (20 U.S.C. 8241) of the Elementary and Secondary Education Act. Grantees under this program are required to carry out at least four of the activities listed in section 10905 of the Elementary and Secondary Education Act (20 U.S.C. 8245), as listed below:

(1) Literacy education programs;
(2) Senior citizen programs;
(3) Children's day care services;
(4) Integrated education, health, social service, recreational, or cultural programs;
(5) Summer and weekend school programs in conjunction with recreation programs;
(6) Nutrition and health programs;
(7) Expanded library service hours to serve community needs;
(8) Telecommunications and technology education programs for individuals of all ages;
(9) Parenting skills education programs;
(10) Support and training for child day care providers;
(11) Employment counseling, training, and placement;
(12) Services for individuals who leave school before graduating from secondary school, regardless of the age of such individual; and
(13) Services for individuals with disabilities.

Applicants should propose an array of inclusive and supervised services that include extended learning opportunities (such as instructional enrichment programs, tutoring, or homework assistance) but may also include recreational, musical and artistic activities; opportunities to use advanced technology, particularly for those children who do not have access to computers or telecommunications at home, or safety and substance-abuse prevention programs. Grants awarded under this program may be used to plan, implement, or expand community learning centers.

Geographic distribution: In awarding grants, the Secretary assures an equitable distribution of assistance among the States, among urban and rural areas of a State, and among urban and rural areas of the United States.

To Obtain an Application Package: Written requests should be mailed to: Adria White, U.S. Department of Education, Office of Educational Research and Improvement, 555 New Jersey Avenue, NW., Washington, DC 20208–5644, Attn: 21st Century Center Learning Centers. Requests may also be e-mailed to *21stCCLC@ed.gov* or faxed to (202) 219–2198. Applications may also be requested by calling 1–800-USA-LEARN.

For Further Information Contact: Amanda Clyburn (202–219–2180) or Steve Balkcom (202–219–2089), U. S. Department of Education, Office of Educational Research and Improvement, 555 New Jersey Avenue, NW., Washington D.C. 20208-5644. E-mail inquiries should be sent to: *21stCCLC@ed.gov*. Faxed inquiries should be sent to: (202) 219–2198.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact persons identified in this notice.

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 may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) via Internet 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 at (202) 512–1530 or, toll free, at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 8241–8246.

Dated: December 2, 1998.

C. Kent McGuire,

Assistant Secretary for Educational Research and Improvement.

Appendix—Empowerment Zones and Enterprise Communities

Empowerment Zones (Listed Alphabetically by State)

California: Oakland
Georgia: Atlanta
Illinois: Chicago
Kansas: Kansas City
Kentucky: Kentucky Highlands Area
(Clinton, Jackson, and Wayne Counties)

Maryland: Baltimore
Massachusetts: Boston
Michigan: Detroit
Mississippi: Mid-Delta Area (Bolivar, Holmes, Humphreys, and LeFlore Counties)
Missouri: Kansas City
New Jersey: Camden
New York: Harlem, Bronx
Pennsylvania: Philadelphia
Texas: Houston, Rio Grande Valley Area (Cameron, Hidalgo, Starr, and Willacy Counties)

Supplemental Empowerment Zones (Listed Alphabetically by State)

California: Los Angeles
Ohio: Cleveland

Enterprise Communities (Listed Alphabetically by State)

Alabama: Birmingham, Chambers County, Greene County, Sumter County
Arizona: Arizona Border Area, (Cochise, Santa Cruz and Yuma Counties), Phoenix
Arkansas: East Central Area (Cross, Lee, Monroe, and St. Francis Counties), Mississippi County, Pulaski County
California: Imperial County, Los Angeles (Huntington Park), San Diego,
San Francisco (Hayview, Hunter's Pointer), Watsonville
Colorado: Denver
Connecticut: Bridgeport, New Haven
Delaware: Wilmington
District of Columbia: Washington
Florida: Jackson County
Georgia: Central Savannah River Area (Burke, Hancock, Jefferson, McDuffie, Tallaferro, and Warrent Counties), Crisp County, Dooley County
Illinois: East St. Louis, Springfield
Indiana: Indianapolis
Iowa: Des Moines
Kentucky: Louisville, McCreary County
Louisiana: Macon Ridge Area (Catahouis, Concordia, Franklin, Morehouse, and Tensas Parishes), New Orleans, Northeast Delta Area (Madison Parish), Quachita Parish
Massachusetts: Lowell, Springfield
Michigan: Five Cap, Flint, Muskegon
Minnesota: Minneapolis, St. Paul
Mississippi: Jackson, North Delta Area (Panola, Quitman, and Tallahatchie Counties)
Missouri: East Prairie, St. Louis
Nebraska: Omaha
Nevada: Clarke County, Las Vegas
New Hampshire: Manchester
New Jersey: Newark
New Mexico: Albuquerque, Moro County, Rio Arriba County, Taos County
New York: Albany, Buffalo, Kingston, Newburgh, Rochester, Schenectady, Troy
North Carolina: Charlotte, Edgecombe County, Halifax County, Robeson County, Wilson County
Ohio: Akron, Columbus, Greater Portsmouth Area (Scioto County)
Oklahoma: Choctaw County, McCurtain County, Oklahoma City
Pennsylvania: Harrisburg, Lock Haven, Pittsburgh
Rhode Island: Providence
South Carolina: Charleston, Williamsburg County
South Dakota: Beadle County, Spink County
Tennessee: Fayette County, Haywood County, Memphis, Nashville, Scott County
Texas: Dallas, El Paso, San Antonio, Waco
Utah: Ogden
Vermont: Accomack County, Norfolk
Washington: Lower Yakima County, Seattle, Tacoma
West Virginia: Huntington, McDowell County, West Central Areas (Braxton, Clay, Fayette, Nichols, and Roane Counties)
Wisconsin: Milwaukee

[FR Doc. 98–32455 Filed 12–3–98; 10:56 am]
BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Technology Center; Notice of Restricted Eligibility Support of Advanced Fossil Resource Utilization Research by Historically Black Colleges and Universities and Other Minority Institutions

AGENCY: Federal Energy Technology Center (FETC), U.S. Department of Energy (DOE).

ACTION: Notice of Restricted Eligibility.

SUMMARY: The Department of Energy announces that it intends to conduct a competitive Program Solicitation and award financial assistance (grants) to U.S. Historically Black Colleges and Universities and Other Minority Institutions in support of innovative research and development of advanced concepts pertinent to fossil resource conversion and utilization. Applications will be subjected to a review by a DOE technical panel, and awards will be made to a limited number of applicants on the basis of the scientific merit of the application, application of relevant program policy factors, and the availability of funds. Collaboration with private industry is encouraged.

FOR FURTHER INFORMATION CONTACT: Mr. John R. Columbia, U.S. Department of Energy, Federal Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–143, Pittsburgh PA 15236–0940, Telephone: (412) 892–6219, FAX: (412) 892–6216, E-mail: Columbia@FETC.DOE.GOV. The solicitation (available in both Word Perfect 6.1 for Windows and Portable Document Format (PDF)) will be released on DOE's FETC World Wide Web Server Internet System (http://www.fetc.doe.gov/business/solicit) on or about November 30, 1998. If applicants do not have Internet capability, a 3.5″ double sided/high density diskette copy of the solicitation will be available, upon receipt of a written request submitted via facsimile (fax) at (412) 892–6216 or e-mail at columbia@fetc.doe.gov. No telephone requests will be honored for request of diskettes.

SUPPLEMENTARY INFORMATION:

Title of Solicitation

''Support of Advanced Fossil Resource Utilization Research by Historically Black Colleges and Universities and Other Minority Institutions.''

Objectives

Through Program Solicitation No. DE–PS26–99FT40192, the Department of Energy seeks applications from Historically Black Colleges and Universities (HBCU) and Other Minority Institutions (OMI) and HBCU/OMI-affiliated research institutes for innovative research and development of advanced concepts pertinent to fossil resource conversion and utilization. The resultant grants are intended to maintain and upgrade educational, training, and research capabilities of our HBCU/OMI in the fields of science and technology related to fossil energy resources; to foster private sector participation, collaboration, and interaction with HBCU/OMI; and to provide for the exchange of technical information and to raise the overall level of HBCU/OMI competitiveness with other institutions in the field of fossil energy research and development. Thus, the establishment of linkages between the HBCU/OMI and the private sector fossil energy community is critical to the success of this program, and consistent with the Nation's goal of ensuring a future supply of fossil fuel scientists and engineers from an previously under-utilized resource.

Eligibility

Eligibility for participation in this Program Solicitation is restricted to Historically Black Colleges and Universities (HBCU) and Other Minority Institutions (OMI) recognized by the Office for Civil Rights (OCR), U.S. Department of Education, and identified on the OCR's United States Department of Education list of U.S. Accredited Postsecondary Minority Institutions list in effect on the closing date of the program solicitation. *Applications submitted by any institution not on OCR's aforementioned list are ineligible for technical evaluation and award.* For information regarding the qualification criteria and process of becoming recognized by the Education Department's Office for Civil Rights as a ''Minority Institution'', institutions should contact the Education Department directly at the following

address: Mr. Peter A. McCabe, Office for Civil Rights, U.S. Department of Education, Washington, DC 20202, Telephone (202) 205–9567. Note: The Education Department should only be contacted on matters related to Institutional status; questions regarding the Program Solicitation should be directed to Mr. Columbia at DOE by telefacsimilie on (412) 892–6216.

Applications from HBCU/OMI-affiliated research institutes must be submitted through the college or university with which they are affiliated. The university (*not* the university-affiliated research institute) will be the recipient of any resultant DOE grant award. Applications submitted in response to the solicitation must meet the following two criteria: the Principal Investigator or a Co-Principal Investigator must be a teaching professor at the submitting university listed in the application; *and* a minimum of 30% of personnel time invoiced under the grant is to pay for student assistance for each year of the grant. Although it is not required as an application qualification criterion, collaboration with the private sector is encouraged, and applications proposing private sector collaboration may be evaluated more favorably. The solicitation will contain a complete description of the technical evaluation factors and relative importance of each factor. Collaboration by the private sector with the HBCU/OMI may be in the form of cash cost sharing, consultation, HBCU/OMI access to industrial facilities or equipment, experimental data and/or equipment not available at the university, or as a subgrantee/subcontractor to the HBCU/OMI.

Areas of Interest

In order to develop and sustain a national program of HBCU/OMI research in advanced and fundamental fossil fuel studies, the Department is interested in innovative research and development of advanced concepts pertinent to fossil fuel conversion and utilization limited to the following seven (7) technical topics:

Topic 1—Advanced Environmental Control Technologies for Coal
Topic 2—Advanced Coal Utilization
Topic 3—Coal Liquefaction Technology
Topic 4—Heavy Oil Upgrading and Processing
Topic 5—Advanced Recovery, Completion/Stimulation, and Geoscience Technologies for Oil
Topic 6—Natural Gas Supply, Storage, and Processing
Topic 7—Faculty/Student Exploratory Research Training Grants

Note: Technical Topic No. 7, *Faculty/Student Exploratory Research Training Grants,* is the *only* topic under this Program Solicitation wherein the inclusion or exclusion of private sector collaboration will not affect the technical evaluation of the application.

Awards

DOE anticipates issuing financial assistance (grants) for each project selected. DOE reserves the right to support or not support, with or without discussions, any or all applications received in whole or in part, and to determine how many awards may be made through the solicitation subject to funds available in this fiscal year. The limitation on the maximum DOE funding for each selected grant to be awarded under this Program Solicitation is as follows:

Topics 1–6	Maximum award
To 12 months grant duration	$85,000.00
13–24 months grant duration	150,000.00
25–36 months grant duration	200,000.00

Topic 7	Maximum award
To 12 months grant duration	$20,000.00

Approximately $850,000 is planned for this solicitation. The total should provide support for four to eight R&D application selections (Topics 1–6), and approximately two to twelve faculty/student exploratory research training application selections (Topic 7).

Solicitation Release Date

The Program Solicitation is expected to be ready for release on or about November 30, 1998. Applications must be prepared and submitted in accordance with the instructions and forms contained in the Program Solicitation. To be eligible, applications must be Received by the designated DOE office by the closing time and date specified in the Program Solicitation (anticipated to be on or about January 20, 1999, at 5:00 PM Eastern Standard Time).

Dale A. Siciliano,

Contracting Officer, Acquisition and Assistance Division.

[FR Doc. 98–32457 Filed 12–4–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Technology Center; Solicitation for Cooperative Agreement Proposal (SCAP); Research Titled: Early Entrance Coproduction Plant

AGENCY: U.S. Department of Energy (DOE), Federal Energy Technology Center.

ACTION: Notice of Availability of a Financial Assistance Solicitation.

SUMMARY: On or about January 22, 1999, The U.S. Department of Energy, Federal Energy Technology Center, plans to issue a Solicitation for Cooperative Agreement Proposal (SCAP) No. DE–SC26–99FT40040 for the solicitation of applications in support of research and development entitled ''Early Entrance Coproduction Plant.'' Authority for this action is the DOE Organization Act Public Law 95–91 and the DOE Financial Assistance Regulations 10 CFR Part 600. DOE anticipates multiple awards with a project duration of approximately five years. DOE plans to make available funds totaling $30,000,000 over the project duration; a minimum cost share of 20 percent for the concept definition and RD&T planning, 35 percent for research, development, and testing; and 50 percent for the preliminary EECP design is required.

DATES: Proposals are due 60 days after release of solicitation.

FOR FURTHER INFORMATION CONTACT: Crystal A. Sharp, IO7, Internet address: csharp@fetc.doe.gov, U.S. Department of Energy, Federal Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507–0880, Telephone (304) 285–4442, Procurement Request No. 26–99FT40040.000.

SUPPLEMENTARY INFORMATION: The objective of this effort is to determine the feasibility of an EECP located at a specific site which produces fuels or chemicals in combination with electric power from synthesis gas derived from coal, or, coal in combination with some other carbonaceous feedstock. The project will consist of three budget periods: Budget Period 1—Concept Definition and RD&T Planning; Budget Period 2—Research, Development and Testing; and Budget Period 3—EECP Engineering Design. Efforts in Budget Period 1 (estimated at 1.5 years), are to focus on performing the necessary feasibility analyses and initial project definition to better define the proposed concept. Budget Period 2 (estimated at 2 years), efforts are to focus on research development and testing of components and subsystems. Budget Period 3 (estimated at 1 year), efforts are to focus

on completion of the EECP engineering design. An Information Package describing the draft technical requirements is currently available on FETC's Homepage at http://www.fetc.doe.gov/business/solicit/. Offerors and interested parties are encouraged to provide comments, suggestions, and/or questions regarding the information package. DOE plans to post the solicitation on FETC's Homepage in late January 1999. Again, FETC Homepage address is http://www.fetc.doe.gov/business/solicit/. Offerors and other interested parties are encouraged to download the solicitation once it becomes available, as paper copies will not be distributed. Any amendments to the solicitation will also be posted on the FETC Homepage. Electronic WordPerfect version 6.1 copies of the solicitation may be obtained by submitting a written request to the address provided above. Telephone requests will not be honored.

Dated: November 24, 1998.

Randolph L. Kesling,

Acquisition and Assistance Division, Federal Energy Technology Center.

[FR Doc. 98–32456 Filed 12–4–98; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC99–717–000; FERC–717]

Proposed Information Collection and Request for Comments

December 1, 1998.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted on or before February 5, 1999.

ADDRESSES: Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Chief Information Officer, CI–1, 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 information collected under the requirements of FERC–717 ''Open Access Same Time Information System'' (OMB No. 1902–0173) is used by the Commission to carry out the general authority in Sections 309 and 311 of the Federal Power Act 1978 (FPA) (16 U.S.C. 825h and 825j). On April 24, 1996, the Commission issued two separate but interrelated final rules. The first rule, Order No. 888, required that all public utilities that own, control or operate facilities used for transmitting electric energy in interstate commerce to have on file open access non-discriminatory transmission tariffs that contain minimum terms and conditions of non-discriminatory service. The second rule and the subject of this collection of information, Order No. 889, required utilities to establish electronic systems to share information about available transmission capacity. Under this rule, each public utility (or its agent) that owns, controls, or operates transmission facilities must create or participate in an Open Access Same-Time Information System (OASIS) that provides open access transmission customers (current and potential) with electronic information about transmission capacity, prices, and other information necessary to obtain open access nondiscriminatory transmission services. The rule also established standards of conduct to ensure that a public utility's employees engaged in a transmission operations function independently of those employees engaged in wholesale purchases and sales of electric energy in interstate commerce. In addition, specifics with respect to various standards and protocols were identified to ensure that the OASIS system presents information in a consistent and uniform manner (these have been subject to additional changes as it has become necessary). The compliance with these requirements is mandatory. The reporting requirements are found at 18 CFR Part 37.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1) x (2) x (3)
140	1	1,418	198,520

The estimated total cost to respondents is $21,157,500.

In the Commission's initial submission to OMB it included an estimate of the annualized Capital/Startup costs necessary for setting out a world wide web site on the Internet. However, nearly three years have passed since that initial estimate and OASIS is now in full operation. Therefore the Commission will only consider costs for the continued operation of OASIS. (Operations and Maintenance costs include the use of staff to maintain the web site plus human resources necessary for developing and handling data for OASIS. The Commission has assumed that 4.5 personnel are necessary for staffing and using a total personnel cost of $109,889, the result is $494,501. To get the total cost, add annual ongoing costs of $110,000 plus staffing costs for a total of $604,501 divided by 4 = $151,125). The estimated total cost of the OASIS requirement is 140 respondents x $151,125 or $21,157,500.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information;

and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical utility; (2) 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) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including 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.

David P. Boergers,

Secretary.

[FR Doc. 98–32371 Filed 12–4–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–1–97–000]

Chandeleur Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

December 1, 1998.

Take notice that on November 25, 1998, Chandeleur Pipe Line Company Pipe Line (Chandeleur) tendered for filing proposed changes in its FERC Gas Tariff, Second Revised Volume No. 1, Ninth Revised Sheet No. 5. Chandeleur is proposing to change it's Fuel and Line Loss Allowance from 0.6% to 0.7%, to become effective January 1, 1999.

Chandeleur states that copies of the filing were served upon the company's jurisdictional customers and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–32378 Filed 12–4–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–88–001

Cove Point LNG Limited Partnership; Notice of Tariff Filing

December 1, 1998.

Take notice that on November 25, 1998, Cove Point LNG Limited Partnership (Cove Point) tendered for filing to become a part of Cove Point's FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet to be effective November 2, 1998:

First Revised Volume No. 1

Substitute First Revised Sheet No. 107A
Substitute First Revised Sheet No. 107B
Substitute Fifth Revised Sheet No. 136

On November 12, 1998, the Commission's Office of Pipeline Regulation issued a letter order accepting tariff sheets filed by Cove Point subject to Cove Point making certain revisions to its tariff sheets. The above-described tariff sheets were filed to make the specified revisions.

Cove Point states that copies of the filing were served upon Cove Point's customers and interested state regulatory commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–32374 Filed 12–4–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–158–000]

Discovery Gas Transmission LLC; Notice of Proposed Changes in FERC Gas Tariff

December 1, 1998.

Take notice that on November 24, 1998, Discovery Gas Transmission LLC (Discovery) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed on the attachment to the filing, with an effective date of January 1, 1999.

Discovery states that the purpose of the filing is to provide the necessary flexibility under its tariff to negotiate rates with its customers. This filing is made in accordance with the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines, issued on January 31, 1996, in Docket No. RM95–6–000 (Policy Statement) and the orders applying the Policy Statement. Discovery proposes an effective date of January 1, 1999.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.W., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–32375 Filed 12–4–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–431–006]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

December 1, 1998.

Take notice that on November 25, 1998, Natural Gas Pipeline Company of America (Natural) tendered for filing to be part of its FERC Gas Tariff, Sixth Revised Volume No. 1, certain tariff sheets, to be effective January 1, 1999.

Natural states that these tariff sheets have been filed in compliance with the Commission's ''Order on Contested Settlement'' issued November 10, 1998 in Docket No. RP97–431–005, which approved Natural's settlement in said docket, subject to limited modifications. The tariff sheets deal primarily with Natural's procedures for posting, auctioning, allocating and awarding firm capacity. The instant filing makes the required modifications.

Natural states that copies of the filing are being mailed to Natural's customers, interested state regulatory agencies and all parties set out on the official service list in Docket No. RP97–431.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rule and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–32373 Filed 12–4–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–57–005]

NorAm Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

December 1, 1998.

Take notice that on November 25, 1998, NorAm Gas Transmission Company (ANGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets to be effective May 1, 1997:

Substitute Original Sheet No. 299A

NGT states that the revised tariff sheet is being filed to replace inadvertently omitted tariff language that was dropped in its May 20, 1997 Compliance Filing in the referenced docket.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–32372 Filed 12–4–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–84–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

December 1, 1998.

Take notice that on November 20, 1998, Northern Natural Gas Company (Northern), 111 South 103rd Street, Omaha, Nebraska 68124–1000, filed a request with the Commission in Docket No. CP99–84–000, pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to operate a delivery point to provide natural gas transportation service to Burlington Resources Oil & Gas Company (Burlington) authorized in blanket certificate issued in Docket No. CP82–401–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern proposes to convert a 6-inch side valve in Upton County, Texas from a receipt point to a delivery point so that it can provide natural gas service for Burlington for use at the McCamey Oil field. Northern reports that they would incur no cost as the existing facility is a currently designated receipt point on Northern's system. Burlington would perform the required modifications to their existing facility downstream of the tap. Northern reports that the proposed delivery point would be 500 Dth on a peak day and 40,000 Dth on an annual basis. Northern further reports that they would not incur any cost under the proposal.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

David P. Boergers,

Secretary.

[FR Doc. 98–32369 Filed 12–4–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–92–000]

Questar Pipeline Company; Notice of Application

December 1, 1998.

Take notice that on November 25, 1998, Questar Pipeline Company (Questar), 180 East 100 South, Salt Lake City, Utah 84111, filed in Docket No. CP99–92–000, an application pursuant to Section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Federal Energy Regulatory Commission's (Commission) regulations, for a

certificate of public convenience and necessity authorizing Questar to increase the certificated maximum allowable operating pressure (MAOP) for Questar's existing Main Line (M.L.) No. 101 pipeline, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Questar proposes to increase the certificated MAOP of its 41.2 mile, 20-inch diameter M.L. No. 101 pipeline in Sweetwater County, Wyoming and Daggett County, Utah, from 1,200 psig to 1,416 psig. Questar indicates that the proposed MAOP increase will provide more efficient operation of Questar's system, within the physical-design capacity of the pipeline, by enabling Questar to intermittently free flow natural gas volumes directly from Questar's Clay Basin storage field during periods when the storage-reservoir pressures are high, to an interconnection with Wyoming Interstate Company, Ltd., located at Questar's Nightingale/Kanda/Coleman Compressor Complex. Questar also indicates that the proposed MAOP increase will provide system benefits to Questar's customers by reducing fuel-gas costs and compressor station wear and tear at Nightingale/Kanda/Coleman Compressor Complex. Questar states that there will be no annual capacity increase associated with the proposal.

Any person desiring to be heard or making any protest with reference to said application should on or before December 11, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to take but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or person to whom the protests are directed. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must serve copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of such comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on these applications if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Questar to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 98–32370 Filed 12–4–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–1–55–000]

Questar Pipeline Company; Notice of Tariff Filing

December 1, 1998.

Take notice that on November 27, 1998, Questar Pipeline Company (Questar) tendered for filing to become part of its FERC Gas Tariff, the following tariff sheets, with an effective date of January 1, 1999:

First Revised Volume No. 1

Tenth Revised Sheet No. 5

Original Volume No. 3

Twenty First Revised Sheet No. 8

Questar states that the tendered tariff sheets show a revised Fuel Gas Reimbursement Percentage (FGRP) of 1.9%, replacing the currently effective 1.4% for tracking fuel-use and lost-and-unaccounted-for gas. The difference of 0.5% includes 0.3% to recover 703,626 Dth that was recorded in Questar's FGRP current deferral account during the 12 months ended September 30, 1998, and 0.2% to reflect the increase in fuel, lost and unaccounted for gas from the current FGRP rate of 1.4% to 1.6% for the prospective 12 months ending December 31, 1999.

Further, Questar states that the revised FGRP is filed pursuant to Section 12.14 of the General Terms and Conditions of Part 1 of Questar's tariff, First Revised Volume No. 1.

Questar states that a copy of this filing has been served upon Questar's customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–32377 Filed 12–4–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–159–000]

Southern Natural Gas Company; Notice of Proposed Changes to FERC Gas Tariff

December 1, 1998.

Take notice that on November 25, 1998, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following revised tariff sheets, to become effective December 1, 1998:

Second Revised Sheet No. 45 of Rate Schedule FT
First Revised Sheet No. 58b of Rate Schedule FT–NN
Third Revised Sheet No. 65 of Rate Schedule IT
First Revised Sheet No. 66 of Rate Schedule IT

Southern states that the tariff sheets are being filed pursuant to Section 4 of the Natural Gas Act and in compliance with the Commission's October 28, 1998 Order in Docket Nos. CP96–153–002, –003, and –004.

On the October 28 Order, the Commission issued an order in Docket No. CP96–153–002, –003, and –004 requiring Southern to revise its Tariff to identify the circumstance under which it construct facilities at its cost under Section 6 of Southern's FERC Gas Tariff, Seventh Revised Volume No. 1 and state the circumstances under which Southern will make contributions in aid of construction (CIAC). Southern states that it has made such revisions to Section 6 of Rate Schedule FT and IT and Section 7 of Rate Schedule FT–NN of its FERC Gas Tariff in the tariff filing submitted herewith.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–32376 Filed 12–4–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–29–000, et al.]

PDC–El Paso Milford, L.L.C., et al.; Electric Rate and Corporate Regulation Filings

November 30, 1998.

Take notice that the following filings have been made with the Commission:

1. PDC–El Paso Milford, LLC

[Docket No. EG99–29–000]

Take notice that on November 24, 1998, PDC–El Paso Milford LLC, 200 High Street, Boston, Massachusetts 02110, tendered for filing with the Federal Energy Regulatory Commission an amendment to its application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

The applicant is a Connecticut limited liability company that proposes to construct and own a five hundred forty-four (544) megawatt natural gas-fired electric generation facility, including ancillary and appurtenant structures, on a site in the city of Milford, Connecticut.

Comment date: December 24, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limits its consideration of comments to those that concern the adequacy or accuracy of the application

2. Wisconsin Electric Power Company, Complainant v. Northern States Power Company (Minnesota), and (Wisconsin) Respondent

[Docket No. EL99–12–000]

Take notice that on November 24, 1998, Wisconsin Electric Power Company (Wisconsin Electric), pursuant to Section 206 of the Federal Power Act, tendered for filing a complaint against Northern States Power Company (NSP), alleging violations of NSP's open access transmission tariff and standards of conduct. On twenty-one different occasions, from mid-May through August of this year, NSP curtailed the firm transmission service needed to support Wisconsin Electric's purchase of firm capacity and power. The complaint alleges that NSP has violated: (1) the terms and conditions of NSP's open access transmission tariff (OATT), including the Commission's policies regulating curtailment practices; (2) the Commission's policies precluding ''and'' pricing or other extra-tariff pricing for open access transmission; and (3) NSP's standards of conduct which prohibit both discriminatory application of its OATT and preferential treatment for itself.

Comment date: December 24, 1998, in accordance with Standard Paragraph E at the end of this notice. Answers to the complaint are also due on or before December 24, 1998.

3. Duke Power Company

[Docket No. ER97–2398–000]

Take notice that on November 24, 1998, Duke Energy Corporation tendered for filing a settlement in the above-reference docket.

Comment date: December 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Orange and Rockland Utilities, Inc.

[Docket No. ER99–678–000]

Take notice that on November 24, 1998, Orange and Rockland Utilities, Inc. (O&R), tendered for filing its Summary Report of O&R transactions during the calendar quarter ending September, 1998 pursuant to the market based rate power service tariff, made effective by the Commission on March 27, 1997 in Docket No. ER97–1400–000.

Comment date: December 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. New Energy Ventures, Inc.

[Docket No. ER99–679–000]

Take notice that on December 1, 1998, New Energy Ventures, Inc. (NEV Inc.), tendered for filing a notice of succession in operations pursuant to 18 CFR 35.16 in order to reflect its name change from New Energy Ventures, L.L.C.

Comment date: December 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. New Energy Holdings, Inc.

[Docket No. ER99–680–000]

Take notice that on November 24, 1998, New Energy Holdings, Inc. (NEV Holdings), tendered for filing a notice of cancellation pursuant to 18 CFR 35.15 in order to reflect the cancellation of its Market Rate Schedule originally

accepted for filing by the Commission in Docket No. ER96–1387–000.

Comment date: December 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. PP&L, Inc.

[Docket No. ER99–683–000]

Take notice that on November 24, 1998, PP&L, Inc., tendered for filing notice that effective January 31, 1999, Rate Schedule No. 58, effective date February 1, 1994, and filed with the Federal Energy Regulatory Commission by PP&L, Inc., is to be canceled.

Comment date: December 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Northern Indiana Public Service Company

[Docket No. ER99–684–000]

Take notice that on November 24, 1998, Northern Indiana Public Service Company (Northern Indiana), tendered for filing a Service Agreement pursuant to its Power Sales Tariff with Electric Clearinghouse, Inc., (ECI).

Northern Indiana has requested an effective date of November 20, 1998.

Copies of this filing have been sent to ECI, to the Indiana Utility Regulatory Commission, and to the Indiana Office of Utility Consumer Counselor.

Comment date: December 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Wisconsin Public Service Corporation

[Docket No. ER99–685–000]

Take notice that on November 24, 1998, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Firm Transmission Service Agreement between WPSC and New Energy Ventures, Inc., providing for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

WPSC requests an effective date to make the agreement effective on the date of execution by WPSC, November 12, 1998.

Comment date: December 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Wisconsin Public Service Corporation

[Docket No. ER99–686–000]

Take notice that on November 24, 1998, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Non-Firm Transmission Service Agreement between WPSC and New Energy Ventures, Inc., provides for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

WPSC requests an effective date to make the agreement effective on the date of execution by WPSC, November 17, 1998.

Comment date: December 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Central Illinois Light Company

[Docket No. ER99–687–000]

Take notice that on November 24, 1998, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61602, tendered for filing with the Commission a substitute Index of Point-To-Point Transmission Service Customers under its Open Access Transmission Tariff and service agreements for two new customers, New Energy Venture, Inc., and Ameren Services Company and one notice of contract termination from Southern Company Energy Marketing for Vastar Power Marketing Inc.

CILCO requested an effective date of November 18, 1998.

Copies of the filing were served on the affected customers and the Illinois Commerce Commission.

Comment date: December 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. MidAmerican Energy Company

[Docket No. ER99–688–000]

Take notice that on November 24, 1998, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, filed with the Commission a Firm Transmission Service Agreement with Transalta Energy Marketing (U.S.) Inc., dated October 28, 1998, and a Firm Transmission Service Agreement with Entergy Power Marketing Corp., dated November 18, 1998, and a NonFirm Transmission Service Agreement with Transalta, dated October 28, 1998, entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of October 28, 1998, for the Agreements with Transalta, and November 18, 1998, for the Agreement with Entergy, and accordingly seeks a waiver of the Commission's notice requirement.

MidAmerican has served a copy of the filing on Transalta, Entergy, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: December 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Carolina Power & Light Company

[Docket No. ER99–689–000]

Take notice that on November 24, 1998, Carolina Power & Light Company (CP&L), tendered for filing executed Service Agreements with Constellation Power Source, Inc., and El Paso Energy Marketing Company under the provisions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4. These Service Agreements supersede the un-executed Agreements originally filed in Docket No. ER98–3385–000 and approved effective May 18, 1998.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: December 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Carolina Power & Light Company

[Docket No. ER99–690–000]

Take notice that on November 24, 1998, Carolina Power & Light Company (CP&L), tendered for filing a Service Agreement for Non-Firm Point-To-Point Transmission Service with TransAlta Energy Marketing Inc., and a Short-Term Firm Point-to-Point Transmission Service Agreement with TransAlta Energy Marketing Inc. Service to this Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

CP&L is requesting an effective date of November 2, 1998, for each Service Agreement.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: December 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. American Electric Power Service Corporation

[Docket No. ER99–691–000]

Take notice that on November 24, 1998, the American Electric Power Service Corporation (AEPSC), tendered for filing executed Firm and Non-Firm Point-to-Point Transmission Service Agreements for Buckeye Power, Inc., as agent for The Iams Company, Firm and Non-Firm Point-to-Point Transmission Service Agreements for TransAlta Energy Marketing (U.S.) Inc., and a Firm Point-to-Point Transmission Service Agreement for Southeastern Power Administration, all under the AEP Companies' Open Access Transmission Service Tariff (OATT). The OATT has been designated as FERC Electric Tariff

Original Volume No. 4, effective July 9, 1996.

AEPSC requests waiver of notice to permit the Service Agreements to be made effective for service billed on and after November 1, 1998.

A copy of the filing was served upon the Parties and the state utility regulatory commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: December 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. PP&L, Inc.

[Docket No. ER99–692–000]

Take notice that on November 24, 1998, PP&L, Inc. (PP&L), tendered for filing a Service Agreement for Affiliate Sales, dated November 20, 1998, with PP&L EnergyPlus Co., under PP&L's Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Revised Volume No. 5. The Service Agreement adds PP&L EnergyPlus Co., as an eligible customer under the Tariff.

PP&L requests an effective date of November 20, 1998, for the Service Agreement.

PP&L states that copies of this filing have been supplied to PP&L EnergyPlus Co., and to the Pennsylvania Public Utility Commission.

Comment date: December 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Wisconsin Electric Power Company

[Docket No. ER99–693–000]

Take notice that on November 24, 1998, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a short-term firm Transmission Service Agreement and a non-firm Transmission Service Agreement between itself and TransAlta. The Transmission Service Agreements allow TransAlta to receive transmission services under Wisconsin Energy Corporation Operating Companies' FERC Electric Tariff, Volume No. 1.

Wisconsin Electric requests an effective date coincident with its filing and waiver of the Commission's notice requirements in order to allow for economic transactions as they appear.

Copies of the filing have been served on TransAlta, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: December 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Southern Energy Canal, L.L.C.

[Docket No. ER99–694–000]

Take notice that on November 24, 1998, Southern Energy Canal, L.L.C. (Southern Canal), tendered for filing an application requesting that the Commission accept for filing agreements for cost-based wholesale power sales by Southern Canal to Cambridge Electric Light Company, Commonwealth Electric Company, New England Power Company, Montaup Electric Company, and Boston Edison Company.

Comment date: December 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. John R. Fielder

[Docket No. ID–3259–000]

Take notice that on November 24, 1998, John R. Fielder tendered for filing an application for authorization under Section 305(b) of the Federal Power Act to hold the following positions:

Senior Vice President, Southern California Edison Company
Director, California Independent System Operator Corporation
Director, California Power Exchange Corporation

Comment date: December 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Polk Power Partners, L.P., a Delaware Limited Partnership

[Docket No. QF92–54–007]

Take notice that on November 24, 1998, Polk Power Partners, L.P., a Delaware limited partnership of 1125 U.S. 98 South Suite 100, Lakeland, Florida 33801, filed with the Federal Energy Regulatory Commission supplemental information to an application for recertification of a facility as a qualifying cogeneration facility that was filed with the Commission on September 16, 1998 pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the Applicant, the cogeneration facility is located in Polk County, Florida. The Commission previously certified the facility as a qualifying facility in 61 FERC ¶ 61,030 (1992), and recertified in 65 FERC ¶ 62,136 (1993), 66 FERC ¶ 61,116 (1994) and 68 FERC ¶ 62,152 (1994). Notices of self-certification and self-recertification were filed on December 23, 1991 and September 7, 1993. According to the Applicant, the supplemental information is being provided to correct two typographical errors and to answer questions posed by the Commission's Staff.

Comment date: December 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–32402 Filed 12–4–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–800–000]

Eastern Shore Natural Gas Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed 1999 System Expansion Project and Request for Comments on Environmental Issues

December 1, 1998.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of Eastern Shore Natural Gas Company's (Eastern Shore) proposal to construct about 4.5 miles of 16-inch-diameter pipeline in Chester County, Pennsylvania; 3.5 miles of 16-inch-diameter pipeline in New Castle County, Delaware; and one 1,085 horsepower (hp) compressor unit in New Castle County proposed in the 1999 System Expansion Project.[1] This EA will be used by the Commission in its decision-making process to

[1] Eastern Shore Natural Gas Company's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law. A fact sheet addressing a number of typically asked questions, including the use of eminent domain, is attached to this notice as appendix 1.[2]

Summary of the Proposed Project

Eastern Shore seeks authorization for the following:

- Install a 1,085 hp compressor unit at its existing Del City Compressor Station, 3 miles west of Delaware City, New Castle County, Delaware;
- Construct about 4.5 miles of 16-inch-diameter loop in Chester County, Pennsylvania;
- Construct about 3.5 miles of 16-inch-diameter loop in New Castle County, Delaware.

The location of the project facilities is shown in appendix 2.

Land Requirements for Construction

Construction of the proposed facilities would require about 56.1 acres of land. Following construction, about 36.1 acres would be maintained as new permanent right-of-way. The remaining 20.0 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Water resources, fisheries, and wetlands
- Vegetation and wildlife
- Endangered and threatened species
- Public safety
- Land use
- Cultural resources
- Air quality and noise
- Hazardous waste

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section on pages 4 and 5 of this notice.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Eastern Shore. This preliminary list of issues may be changed based on your comments and our analysis.

- One federally listed threatened species, the bog turtle, may occur in the proposed project area.
- Nineteen streams and thirteen wetlands would be crossed by the project.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations/routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.2;
- Reference Docket No. CP98–800–000; and
- Mail your comments so that they will be received in Washington, DC on or before January 4, 1999.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 3). Only intervenors have the right to seek rehearing of the Commission's decision.

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from Mr.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

Paul McKee of the Commission's Office of External Affairs at (202) 208–1088.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–32379 Filed 12–4–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6197–9]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Proposed Collection; Small System Survey

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: Small System Survey, ICR #1863.01. 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 January 6, 1999.

FOR FURTHER INFORMATION 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. 1863.01.

SUPPLEMENTARY INFORMATION:

Title: Small System Survey, ICR #1863.01. This is a new collection.

Abstract: The Environmental Protection Agency has developed three interrelated Supplemental Surveys as part of an ongoing, scientific research and information collection program associated with the 1996 Information Collection Rule (ICRule) that supports drinking water regulation development. The overall objective of this research and information collection program is to provide a sound scientific and technical basis for generating and evaluating strategies for reducing risks associated with microbial pathogens and disinfection byproducts in the US drinking water supply.

EPA must conduct a Regulatory Impact Analysis (RIA) for the upcoming Stage 2 Long Term Enhanced Surface Water Treatment Rule (LT2ESWTR) and Stage 2 Disinfectant and Disinfection Byproducts Rule (Stage 2 DBPR) and that evaluates the potential impacts on all system sizes. This rule is scheduled for promulgation in May 2002. A major regulatory option being considered is to target treatment for protozoa as a means for controlling not only protozoa but other waterborne pathogens. Therefore, a critical element of the RIA is a characterization of the national distribution of protozoa in source waters for all size systems. Additional data are needed to better characterize these distributions because: (1) the ICRule only targets systems serving 100,000 people or more, (2) the ICRule protozoa method exhibits low recovery and a high detection limit, and (3) limited data are available for systems serving less than 100,000. As these protozoan concentration estimates are inputs to the Regulatory Impact Analysis for this next phase of rulemaking, the Regulatory Impact Analysis may underestimate the level of treatment required for protozoa removal along with the resulting cost impacts of this rule.

To address these remaining data needs, EPA has developed and funded the ICRule Supplemental Surveys. Although the existing ICRule method remains available for possible use in these surveys, a key component of the Supplemental Surveys will be reliance upon a new analytical method, Method 1622, to measure Cryptosporidium and potentially Giardia concentrations. Because of its anticipated higher recovery rate and lower detection limit, Method 1622 is expected to provide a more accurate estimate of Cryptosporidium concentrations in source waters. The Supplemental Surveys will focus on gathering and analyzing data from a subset of large, medium and small systems. Today's notice focuses on the information collection burden associated with small systems only. The burden associated with the large and medium surveys was covered under the Information Collection Request for the 1996 ICRule.

Participation in the Small System Supplemental Surveys will be voluntary. As is appropriate in survey design, the size of the initial sampling list (a simple random sample) will be large enough to allow for some expected declinations. Forty small systems will participate in the survey and will sample twice a month during a 12 month monitoring period. The first monthly sample event will include protozoa (Cryptosporidium and potentially Giardia), bacterial samples (total coliform and E. coli or fecal coliform), wet chemistry samples (total organic carbon (TOC), alkalinity, UV254, bromide and ammonia), and water quality parameters (turbidity, pH and temperature). The second monthly sample event will include protozoa, bacterial samples, and water quality parameters. Twenty percent of the sample events will collect an additional raw water sample for use as a matrix spike to assess how the water matrices may be affecting method performance. Additional parameters that will be measured during the matrix spike events include dissolved organic carbon (DOC), total suspended solids (TSS), total dissolved solids (TDS) and conductivity.

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 6/24/98 (63 FR 34379); 1 set of comments was received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 32 hours per utility. An additional 40 hrs are attributed to the recruitment portion of this survey where 200 utilities will be asked to complete a reply form (at 0.2 hours per utility to complete the form) and from those 200 utilities, 40 will be selected to participate in the survey. 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: Public water systems serving less than 10,000 people.

Estimated Number of Respondents: 200.

Frequency of Response: 2 per month.

Estimated Total Annual Hour Burden: 1320 hours.

Estimated Total Annualized Cost Burden: $55,000.00.

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. 1863.01 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OP Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: November 30, 1998.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 98–32414 Filed 12–4–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6198–2]

Notice of Public Meetings on Drinking Water Issues

Notice is hereby given that the Environmental Protection Agency (EPA) is holding a public meeting on December 15 and 16, 1998 at the Park Hyatt Hotel, 24th and M Street, NW., Washington DC for the purpose of information exchange with stakeholders on issues related to the development of regulations to control microbial pathogens and disinfection byproducts in drinking water, including a Stage 2 Disinfectants/Disinfection Byproducts Rule and a Long-term 2 Enhanced Surface Water Treatment Rule. The meeting will start at 9:00 AM on December 15 and will adjourn on December 16 at 3:30 PM. The meeting will provide: (1) A review of the Stage 1 Disinfectants/Disinfection Byproducts Rule and the Interim Enhanced Surface Water Treatment Rule; (2) an overview of the Information Collection Rule and research supporting the drinking water rules; (3) an opportunity for stakeholders to discuss the issues and process for completing the Stage 2 deliberations; and (4) an opportunity to discuss schedules for subsequent meetings.

EPA is inviting all interested members of the public to participate in the meeting. As with all previous meetings in this series, to the extent that space is available, EPA is instituting an open door policy to allow any member of the public to attend any of the meetings for any length of time. Approximately 50 seats will be available for the public. Seats will be available on a first-come, first served basis.

For additional information about the meeting, please contact Ephraim King or Mike Cox of EPA's Office of Ground Water and Drinking Water at (202) 260–7575 or by e-mail at cox.michael@epamail.epa.gov.

Dated: December 1, 1998.

Elizabeth Fellows,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 98–32413 Filed 12–4–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[PF–848; FRL–6047–2]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–848, must be received on or before January 6, 1999.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under ''SUPPLEMENTARY INFORMATION.'' No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager listed in the table below:

Product Manager	Office location/telephone number	Address
Mary Waller (PM 21)	Rm. 247, CM #2, 703–308–9354, e-mail:waller.mary@epamail.epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA
Cynthia Giles-Parker (PM 22).	Rm. 247, CM #2, 703–305–7740, e-mail: giles-parker.cynthia@epamail.epa.gov.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–848] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official

record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number (insert docket number) and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 24, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. BASF Corporation, Agricultural Products

PP 7E4874

EPA has received a pesticide petition (PP 7E4874) from BASF Corporation, Agricultural Products, P.O. Box 13528, Research Triangle Park, NC 27709, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing an import tolerance for residues of the fungicide fenpropimorph, (+)-cis-4-(3-(4-tert-butylphenyl)-2-methylpropyl)-2,6-dimethylmorpholine in or on the raw agricultural commodity bananas at 1.5 parts per million (ppm) of which no more than 0.3 ppm is found in the pulp. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant and animal metabolism*. BASF Corporation notes that metabolism in plants and animals is understood.

2. *Analytical method*. The method of analysis includes extraction, liquid/liquid partition, column clean-up, and quantitation by gas chromatography/nitrogen-phosphorus detector. The overall fortification recoveries from the unpeeled, whole banana, and the peeled (pulp) samples together averaged 87.1% ± 9.3% (N=76).

3. *Magnitude of residues*. Fifteen crop residue trials were conducted in the banana growing regions of Mexico, South, and Central America including three sites in Colombia, four sites in Costa Rica, four sites in Ecuador, one site in Guatemala, two sites in Honduras, and one site in Mexico. Four sequential applications were made at the target rate of 545 g/ha to both bagged and unbagged bananas at each site. Fruit from both the bagged and unbagged treatments were harvested at 0 days following the last application.

Whole fruit (peel and pulp) samples and pulp only samples were analyzed for all treatments at all sites. Under typical practices (bagged bananas) residue in the whole fruit ranged from < the limit of quantitation (LOQ) (0.050 milligrams/kilogram (mg/kg)) to a maximum of 0.4 mg/kg. Banana pulp residues from bagged bananas ranged from < the LOQ (0.050 mg/kg to 0.20 mg/kg and averaged 0.0518 mg/kg. The average value was calculated by assuming all values below the LOQ were equal to one-half the LOQ or 0.025 mg/kg.

Under worst-case practices (unbagged bananas) residue in the whole fruit ranged from < the LOQ (0.050 mg/kg to a maximum of 1.4 mg/kg. Banana pulp residues from unbagged bananas ranged from < the LOQ (0.050 mg/kg to 0.43 mg/kg and averaged 0.1149 mg/kg. The average value was calculated by assuming all values below the LOQ were equal to one-half the LOQ or 0.025 mg/kg.

B. Toxicological Profile

1. *Acute toxicity*. Based on available acute toxicity data fenpropimorph does not pose any acute toxicity risks. These studies are not required for an import tolerance, but we have provided the following paragraph to demonstrate that fenpropimorph is not an acute toxicant. The acute toxicity studies place technical fenpropimorph in acute toxicity category III for acute oral, dermal, inhalation, and skin irritation; and in acute toxicity category IV for eye irritation and the technical material is not a skin sensitizer. Additionally, results of an acute oral neurotoxicity and a subchronic oral feeding neurotoxicity study demonstrated that fenpropimorph was not a neurotoxic compound.

2. *Genotoxicity*. A Modified Ames Test (1 Study; point mutation): Negative; *In Vitro* Cytogenetics-Human lymphocytes (1 Study; Chromosome Aberrations): Negative; Mouse Micronucleus Assay (1 Study; Chromosome Aberrations): Negative; *In Vitro* UDS Test Using Rat Hepatocytes (1 Study; DNA damage and repair): Negative; fenpropimorph has been tested in a total of 4 genetic toxicology assays. These assays were performed both *in vitro* and *in vivo* and multiple assays were conducted for each of the three EPA Guideline requirement categories. Based on the data presented in this petition, fenpropimorph does not induce gene mutations and does not induce other effects indicative of genotoxicity. Fenpropimorph does not pose a mutagenic hazard to humans.

3. *Reproductive and developmental toxicity*. A 2-generation reproduction study with rats fed dosages of 0, 0.625, 1.25, and 2.5 milligrams/kilogram/day (mg/kg/day) (average mg/kg/day dose levels for both male and female rats) with a reproductive no observed adverse effect level (NOAEL) of 2.5 mg/kg/day and with a parental NOAEL of 2.5 mg/kg/day based on; (i) no treatment-related clinical signs, significant body weight changes, parameters of fertility and gestation, or macro- or histopathological changes were observed for the parental F0 and F1 at all dose levels tested; (ii) in the F1 litters, a slight increased incidence of stillborn pups, unfolding of the ear, and slight reduced body weight development during lactation were observed in the 2.5 mg/kg/day dose level group; and (iii) in the F2 litters, no treatment-related effects were observed at all dose levels tested.

A developmental prenatal study was conducted via oral gavage in rats resulted in dosages of 0,2.5, 10, 40, and 160 highest dose tested (HDT) mg/kg/day from day 6 to 15 of gestation with a development toxicity NOAEL of 40 mg/kg/day and a maternal toxicity of 10 mg/kg/day based on the following: (i) signs of maternal toxicity, in the form of

decreased body weights and/or clinical signs observed at dose levels > 40 mg/kg/day; (ii) maternal animals in the 160 mg/kg/day dose group showed an increased incidence of vaginal bleeding from day 10 to 19 of gestation and increased placental weight; (iii) maternal animals in the 160 mg/kg/day dose group showed an increase in the number of resorptions as compared to controls; (iv) decreases in fetal body weights and size and number of viable fetus were observed at the HDT; (v) a significant number of fetuses had a finding of cleft palate in the high dose group tested were observed; and (vi) litters from animals treated at the lower doses remained entirely unaffected.

A second developmental perinatal study was conducted via oral gavage in rats resulted in dosages of 0, 2.5, 10, 40, and 160 HDT mg/kg/day from day 15 to 21 of gestation with a development toxicity NOAEL of 40 mg/kg/day and a maternal toxicity of 40 mg/kg/day based on the following: (i) four animals died on days 1 to 6 after delivery; (ii) signs of maternal toxicity, in the form of decreased body weights and/or clinical signs observed at the top dose level; (iii) at birth, body weight was significantly reduced in the pups of the top dose group; (iv) the brood care at the top dose group animals was generally unsatisfactory and led to a high perinatal mortality of the fetuses with only 30 viable fetuses left on day 1 post partum, the dead fetuses showed no increased incidence of malformations; (v) the few surviving pups of the dams at the 160 mg/kg/day dose group showed decreases in fetal body weights and size was retarded, no disturbances were found in the functional and behavioral tests that were conducted on the surviving pups; (vi) at necropsy, all dams showed comparable number of implantations and the animals scarified as scheduled revealed no treatment-related changes and also the mean organ weights were similar in treated and untreated groups; and (vii) litters from animals treated at the lower doses remained entirely unaffected and no pathological findings were also noted in these pups.

A series of two developmental study, Study A dose levels were 0, 2.4, 12, 36, and 60 mg/kg/day and, Study B dose levels were 0, 7.5, 15, and 30 mg/kg/day were conducted via oral gavage in rabbits resulted in dosages of 0, 2.4, 7.5, 12, 15, 30, 36, and 60 HDT mg/kg/day with a development toxicity NOAEL of 15 mg/kg/day and a maternal toxicity of 15 mg/kg/day based on the following: (i) Severe clinical signs and/or mortality were observed at dose levels > 30 mg/kg/day; (ii) decreased body weight, food consumption, and absorption/premature delivery in the 36 and 60 mg/kg/day dose groups which survived to the end of the studies; (iii) fetal effects consisted of high number of dead fetuses and several gross malformations (pseudo ancylosis, syndactylia, micromelia, aplasia of the twelveth rib) at the HDT; and (iv) pseudo ancylosis was also seen in 1 fetus from the 12 mg/kg/day dose group and in 6 fetuses in the 36 mg/kg/day dose level, but this finding is known to occur spontaneously in rabbits of this strain used and the contractures usually normalize during early stages of life. Due to the severe effect at the high dose level (HDL), these effects may be considered to represent a specific teratogenic effect of the treatment.

4. *Chronic toxicity*. Based on review of the available data, BASF believes the Reference Dose (RfD) for fenpropimorph will be based on a 2-year feeding study in rats with a threshold NOAEL of 0.3 mg/kg/day. Using an uncertainty factor of 100, the RfD is calculated to be 0.003 mg/kg/day. The following are summaries of the pertinent toxicity data supporting fenpropimorph tolerances. Additionally, these are summaries of EPA reviewed Phase III Toxicology Summaries prepared by BASF Corporation for EPA.

A 1 year feeding study in dogs fed dosages of 0, 0.8, 3.2, or 12.7 mg/kg/day with a NOAEL of 3.2 mg/kg/day based on the following effects: (i) no changes in body weights nor food consumption for both the high dose male and female dogs were observed at all tested dose levels as compared to controls; (ii) blood biochemistry values were slightly increased in high dose males (alkaline phosphatase) and females (alanine aminotransferase); (iii) the cholininesterase from plasma, red blood cells, and brain showed comparable activities in treated and untreated dogs; and (iv) neither organ weight analyses nor macro- and histopathological examinations demonstrated any treatment related effects as compared to controls.

A combined chronic feeding/oncogenicity study was performed in rats being fed dosages of 0, 0.2, 0.3, 1.7 and 8.8 mg/kg/day (males) and 0, 0.2, 0.4, 2.1, and 11.2 mg/kg/day (females) with a NOAEL of 0.3 mg/kg/day (males) and 0.4 mg/kg/day (females) based on the following effects: (i) decreased in body weights were observed in both males and female rat at dose levels > 1.7 mg/kg/day with a very slight progression of severity to the upper level; (ii) decreased food consumption in female rats at the HDT; (iii) significantly lower activities of plasma cholinesterase were noted in male and female rats in the HDT where as no effect was found for red blood cell cholinesterase values; (iv) at terminal sacrifice, reduced activities of brain cholinesterase were detected in males, only, at the 1.7 and 8.8 mg/kg/day dose levels groups tested; (v) increased liver weights for females at dose levels > 2.1 mg/kg/day and in males of the top dose group; (vi) microscopic findings were observed in the liver of male and female rats in the HDLs, only; and (vii) no increased incidence of neoplasms occurred at any dose levels tested in this study.

A carcinogenicity study in mice fed dosages of 0, 0.5, 3.0, 16, and 106 HDT mg/kg/day (males) and 0, 0.5, 3.5, 17, and 118 HDT mg/kg/day (females) with a NOAEL of 3.0 and 3.5 mg/kg/day for male and female mice, respectively, based on the following effects: (i) decreased body weights and slight inferior food conversion ratio were observed in both male and female mice at the HDT; (ii) decreased cholinesterase activities were observed in red blood cells for female mice in the 17 and 118 mg/kg/day dose level tested at terminal sacrifice; (iii) at the HDT increased liver weights were observed for female mice at terminal sacrifice and in males at interim sacrifice after 52 weeks; and (iv) no increased incidence of neoplasms occurred at any dose levels tested in this study.

5. *Endocrine disruption*. No specific tests have been performed with fenpropimorph to determine whether the chemical may have an effect in humans that is similar to an effect produced by naturally occurring estrogen or other endocrine effects. However, there are significant findings in other relevant toxicity studies, i.e. teratology and multi-generation reproductive studies, that would suggest fenpropimorph produces endocrine related effects.

C. Aggregate Exposure

Based on the information above it is concluded that the RfD used to assess safety to children should be 0.003 mg/kg/day dose level established in the 2-year rat oral feeding study. Using the assumption stated for the general population, BASF concluded that the most sensitive child population group is that of children > 1 year. Using the same RfD and the same conservative exposure assumptions employed in the dietary risk analysis for the general population. It was calculated that the exposure to this group to be approximately > 11% of the RfD for all uses proposed in this document. Therefore, based on the completeness and reliability of the

toxicity data, and the exposure assessment discussed above, BASF concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to residues of fenpropimorph, including all anticipated dietary exposure.

1. *Dietary exposure*. For the purpose of assessing the potential chronic dietary exposure, BASF has estimated aggregate exposure based on Theoretical Maximum Residue Contribution (TMRC) from the tolerance of fenpropimorph on bananas at 0.3 ppm the maximum residue found in bananas. The TMRC is a ''worse case'' estimate of dietary exposure since it is assumed that 100% of all crops for which the tolerances are established are treated and that pesticide residues are always found at tolerance levels. Based on the expected RfD of 0.003 mg/kg/day (from the NOAEL determined in the 2-year feeding study in rats and a 100 fold safety factor) and the tolerance level residue chronic dietary exposure of the general population is less than 2.5% of the RfD. Therefore, based on the completeness and reliability of the toxicity data, and the exposure assessment discussed above, BASF concludes that there is a reasonable certainty that no harm will result from aggregate exposure to residues of fenpropimorph, including all anticipated dietary exposure.

2. *Food*. BASF has reviewed the available toxicology database to determine the endpoints of concern. For Fenpropimorph BASF believes there is no concern regarding an acute dietary risk since the available data do not indicate any evidence of significant toxicity from a 1-day or single, event exposure by the oral route.

3. *Drinking water/Non-dietary exposure*. There are no other potential sources (such as in drinking water and exposure from non-occupational sources) of exposure to fenpropimorph for the general population to residues of fenpropimorph due to the fact the action being requested is to establish an import tolerance, only.

4. *Threshold and non-threshold effects*. The proposed RfD for fenpropimorph is based on a 2-year feeding study in rats with a threshold NOAEL of 0.3 mg/kg/day. Using an uncertainty factor of 100, the RfD is calculated to be 0.003 mg/kg/day. Fenpropimorph is considered not to be a carcinogenic material. Therefore, it should be regulated by the traditional RfD approach to quantify human risk.

D. Cumulative Effects

BASF has considered the potential for cumulative effects of fenpropimorph and other substances that have a common mechanism of toxicity. BASF is not aware of any other active ingredients which is structurally similar to fenpropimorph that are registered on bananas. Therefore, BASF has considered only the potential risks of fenpropimorph in its exposure assessment.

E. Safety Determination

1. *U.S. population*. Using the exposure assumptions described above, based on the completeness and there liability of the toxicity data, BASF has estimated that aggregate exposure to fenpropimorph will utilize > 2.5% of the RfD for the U.S. population. EPA generally has no concern for exposure below 100% of the RfD. Therefore, based on the completeness and reliability of the toxicity data, and the exposure assessment discussed above, BASF concludes that there is a reasonable certainty that no harm will result from aggregate exposure to residues of fenpropimorph, including all anticipated dietary exposure.

2. *Infants and children*. The findings in the rat and rabbit are most likely as a result of excessive maternal toxicity, treatment of pregnant rats and rabbits with fenpropimorph induced embryotoxic effects which manifested themselves in the form of early resorptions and structural anomalies in the offspring. In both the rat and rabbit, the dose-effect relationship was rather steep and showed clear threshold levels. At dose levels below the threshold of maternal toxicity, reproductive parameters as well as the offsprings remained entirely unaffected. This data demonstrates that the rat and rabbit are similarly sensitive to fenpropimorph. Additionally, the NOAEL of 0.3 mg/kg/day from the chronic rat study used to set the RfD is 33x to 50x lower than the maternal NOAELs established in the rat and rabbit teratology studies, respectively. The developmental effects observed in either the rat or rabbit occurred only at maternally toxic doses. Therefore, no additional safety factor is needed for children.

A 2-generation reproduction study with rats fed dosages of 0, 0.625, 1.25, and 2.5 mg/kg/day (average mg/kg/day dose levels for both male and female rats) with a reproductive NOAEL of 2.5 mg/kg/day and with a parental NOAEL of 2.5 mg/kg/day based on: (i) no treatment-related clinical signs, significant body weight changes, parameters of fertility and gestation, or macro-or histopathological changes were observed for the parental F0 and F1 at all dose levels tested; and (ii) in the F1 litters, a slight increased incidence of stillborn pups, unfolding of the ear, and slight reduced body weight development during lactation were observed in the 2.5 mg/kg/day doselevel group; (iii) in the F2 litters, no treatment-related effects were observed at all dose levels tested. As stated above, the NOAEL of 0.3 mg/kg/day from the chronic rat study used to set the RfD is approximately 8x lower than the maternal NOAEL established in the rat reproduction study. Therefore, no additional safety factor is needed for children.

F. International Tolerances

A maximum residue level has not been established under Codex Alimentarius Commission for fenpropimorph in any of the crops petitioned: bananas.

2. Rohm and Haas Company

PP 1F3995, 1F3989 and 2F4154

EPA has received data intended to satisfy the conditions which caused time-limits to be placed on the tolerances proposed by the three pesticide petitions PP 1F3995, 1F3989, and 2F4154 from Rohm and Haas Company, 100 Independence Mall West, Philadelphia, PA 19106-2399, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by extending until December 31, 2001 the time-limited tolerances for residues of fenbuconazole (alpha-(2-(4-chlorophenyl)-ethyl)-alpha-phenyl-3-(1H-1,2,4-triazole)-1-propanenitrile) in or on the raw agricultural commodities bananas at 0.3 parts per million (ppm), banana pulp at 0.05 ppm, stone fruits (except plums and prunes) at 2.0 ppm, and pecans at 0.1 ppm. EPA has determined that the submissions concern the additional data requirements as elements set forth in section 408(f)(1) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time.

A summary of the data that support the tolerances, and of exposure to and risks from the use of fenbuconazole, is printed below. This summary of the petitions was prepared by the registrant and represents the views of the registrant. EPA is publishing the petition summary with only minor editing changes. The petition summary includes an announcement of the availability of the analytical methods available to EPA for the detection and

measurement of the pesticide chemical residues.

A. Residue Chemistry

The tolerance expression for fenbuconazole residues in or on bananas, banana pulp, pecans, and stone fruit (except plums and prunes) is the combined residues of fenbuconazole (alpha-(2-(4-chlorophenyl)-ethyl)-alpha-phenyl-3-(1H-1,2,4-triazole)-1-propanenitrile) and its metabolites cis-5-(4-chlorophenyl)-dihydro-3-phenyl-3-(1H-1,2,4-triazole-1-ylmethyl)-2-3H-furanone and trans-5-(4-chlorophenyl)-dihydro-3-phenyl-3-(1H-1,2,4-triazole-1-ylmethyl)-2-3H-furanone. Residues of these compounds are combined and expressed as parent compound to determine the total residue in or on bananas, banana pulp, pecans, and stone fruit (except plums and prunes). No changes in the tolerances of fenbuconazole or in the tolerance expression (parent plus lactone metabolites) for pecans, bananas, or stone fruit from that indicated in 40 CFR 180.480 will be necessary for the tolerance extensions. Current tolerances for fenbuconazole are 0.3 ppm for banana whole fruit, 0.05 ppm for banana pulp, 0.1 ppm for pecans, and 2.0 ppm for the stone fruit crop group (except plums and prunes). There is also a current time-limited (Section 18) tolerance for fenbuconazole on blueberries of 1.0 ppm.

1. *Analytical method*. Fenbuconazole residues (parent plus lactones) are measured in pecans, stone fruit, and bananas at an analytical sensitivity of 0.01 milligrams/kilogram (mg/kg) by soxhlet extraction of samples in methanol, partitioning into methylene chloride, redissolving in toluene, clean up on silica gel, and gas liquid chromatography using nitrogen specific thermionic detection.

2. *Magnitude of residues*—i. *Pecans*. Four field trials were conducted in pecans. Eight to ten applications were made at the maximum use rate of 0.125 lb a.i./A, and nuts were harvested 28 days after the last application. Field residue values in nutmeat for the four trials were 0.004, 0.004, <0.01, and <0.01 ppm.

ii. *Bananas*. Fourteen field trials were conducted on pulp from bagged bananas, and nine field trials were conducted on whole fruit from bagged bananas. Bagged bananas are typically used in commerce. Eight applications (5 and 7 applications in two trials) were made at the maximum use rate of 0.09 lb a.i./A and bananas were harvested on the last day of application. The highest field residue values were 0.019 ppm in pulp and 0.0589 ppm in whole fruit. The average field residue values were 0.004 ppm in pulp and 0.010 ppm in whole fruit.

iii. *Stone fruit*—a. *Peaches*. Ten field trials were conducted on peaches. Seven to ten applications were made at the maximum use rate of 0.1 lb a.i./A and fruit were harvested on the last day of application. The highest field residue value was 0.5096 ppm, and the average field residue value was 0.351 ppm.

b. *Cherries*. Eleven field trials were conducted on cherries. Five to six applications were made at the maximum use rate of 0.1 lb a.i./A and fruit were harvested on the last day of application. The highest field residue value was 0.641 ppm, and the average field residue value was 0.434 ppm.

c. *Apricots*. Two field trials were conducted on apricots. Six applications were made at the maximum use rate of 0.125 lb a.i./A and fruit was harvested on the last day of application. The field residue values in four samples measured were 0.168, 0.226, 0.268, and 0.279 ppm.

B. Toxicological Profile

The toxicology of fenbuconazole is summarized in the following sections. There is no evidence to suggest that human infants and children will be more sensitive than adults, that fenbuconazole will modulate human endocrine systems at anticipated dietary exposures, or cause cancer in humans at the dietary exposures anticipated for this fungicide. While the biochemical target for the fungicidal activity of members of the DMI class is shared, it cannot be concluded that the mode of action of fenbuconazole which produces phytotoxic effects in plants or toxic effects in animals is also common to a single class of chemicals.

1. *Acute toxicity*. Fenbuconazole is practically nontoxic after administration by the oral, dermal andrespiratory routes. The acute oral LD_{50} in mice and rats is >2,000 mg/kg. The acute dermal LD_{50} in rats is >5,000 mg/kg. Fenbuconazole was not significantly toxic to rats after a 4 hour inhalation exposure, with an LD_{50} value of > 2.1 mg/L. Fenbuconazole is classified as not irritating to skin (Draize score = 0), in consequentially irritating to the eyes (mean irritation score= 0), and it is not a sensitizer. No evidence exists regarding differential sensitivity of children and adults to acute exposure.

2. *Genotoxicity*. Fenbuconazole has been adequately tested in a variety of *in vitro* and *in vivo* mutagenicity tests. It is negative in the Ames test, negative in *in vitro* and *in vivo* somatic and germcell tests, and did not induce unscheduled in DNA synthesis (UDS). Fenbuconazole is not genotoxic.

3. *Reproductive and developmental toxicity*. These conclusions were extracted from 60 FR 27419, May 24, 1995. Fenbuconazole is not teratogenic. The maternal no observed adverse effect level (NOAEL) in rabbits was 10 mg/kg/day and 30 mg/kg/day in rats. The fetal NOAEL was 30 mg/kg/day in both species. The parental NOAEL was 4.0 mg/kg/day (80 ppm) in a 2-generation reproduction study in rats. The reproductive NOAEL in this study was greater than 40.0 mg/kg/day (800 ppm; highest dose tested (HDT)). Fenbuconazole had no effect on male reproductive organs or reproductive performance at any dose. The adult lowest observed adverse effect level (LOAEL) was 40.0 mg/kg/day (800 ppm; HDT). Systemic effects of decreased body weight gain; maternal deaths; and hepatocellular, adrenal, and thyroid follicular cell hypertrophy were observed. No effects on neonatal survival or growth occurred below the adult toxic levels. Fenbuconazole does not produce birth defects and is not toxic to the developing fetus at doses below those which are toxic to the mother.

4. *Subchronic toxicity*. In a 21 day dermal toxicity study in the rat, the NOAEL was greater than 1,000 mg/kg/day, with no effects seen at this limit dose.

5. *Chronic toxicity*. In 2 year combined chronic toxicity/ oncogenicity studies in rats, the NOAEL was 80 ppm (3.03 mg/kg/day for males and 4.02 mg/kg/day for females) based on decreased body weight, and liver and thyroid hypertrophy. In a 1 year chronic toxicity study in dogs, the NOAEL was 150 ppm (3.75 mg/kg/day) based on decreased body weight, and increased liver weight. The LOAEL was 1,200 ppm (30 mg/kg/day). In a 78 week oncogenicity study in mice, the NOAEL was 10 ppm (1.43 mg/kg/day). The LOAEL was 200 ppm (26.3 mg/kg/day, males) and 650 ppm (104.6mg/kg/day, females) based on increased liver weights and histopathological effects on the liver. These effects were consistent with chronic enzyme induction from high dose dietary exposure.

A Reference Dose (RfD) for systemic effects at 0.03 mg/kg/day was established by EPA in 1995 based on the NOAEL of 3.0 mg/kg/day from the rat chronic study. This RfD adequately protects both adults and children.

Twenty-four month rat chronic feeding/carcinogenicity studies with fenbuconazole showed effects at 800 and 1,600 ppm. Fenbuconazole produced a minimal, but statistically

significant increase in the incidence of combined thyroid follicular cell benign and malignant tumors. These findings occurred only in male rats following life-time ingestion of very high levels (800 and 1,600 ppm in the diet) fenbuconazole. Ancillary mode-of-action studies demonstrated that the increased incidence of thyroid tumors was secondary to increased liver metabolism and biliary excretion of thyroid hormone in the rat. This mode of action is a nonlinear phenomenon in that thyroid tumors occur only at high doses where there is an increase in liver mass and metabolic capacity of the liver. At lower doses of fenbuconazole in rats, the liver is unaffected and there is no occurrence of the secondary thyroid tumors. Worst-case estimates of dietary intake of fenbuconazole in human adults and children indicate effects on the liver or thyroid, including thyroid tumors, will not occur, and there is a reasonable certainty of no harm.

In support of the findings above, EPA's Science Advisory Board has approved a final thyroid tumor policy, confirming that it is reasonable to regulate chemicals on the basis that there exists a threshold level for thyroid tumor formation, conditional upon providing plausible evidence that a secondary mode of action is operative. This decision supports a widely-held and internationally respected scientific position.

In a 78 week oncogenicity study in mice there was no statistically significant increase of any tumor type in males. There were no liver tumors in the control females and liver tumor incidences in treated females just exceeded the historical control range. However, there was a statistically significant increase in combined liver adenomas and carcinomas in females at the high dose only (1,300 ppm; 208.8 mg/kg/day). In ancillary mode-of-action studies in female mice, the increased tumor incidence was associated with changes in several parameters in mouse liver following high doses of fenbuconazole including: an increase in P450 enzymes (predominately of the CYP 2B type), an increase in cell proliferation, an increase in hepatocyte hypertrophy, and an increase in liver mass (or weight). Changes in these liver parameters as well as the occurrence of the low incidence of liver tumors were nonlinear with respect to dose (i.e., were observed only at high dietary doses of fenbuconazole). Similar findings have been shown with several pharmaceuticals, including phenobarbital, which is not carcinogenic in man. The nonlinear relationship observed with respect to liver changes (including the low incidence of tumors) and dose in the mouse indicates that these findings should be carefully considered in deciding the relevance of high-dose animal tumors to human dietary exposure.

The Carcinogenicity Peer Review Committee (PRC) of the Health Effects Division (HED) classified fenbuconazole as a Group C tumorigen (possible human carcinogen with limited evidence of carcinogenicity in animals). The PRC used a low-dose extrapolation model. The $Q1^*$ risk factor applied (1.06×10^{-2} $(mg/kg/day)^{-1}$) was based on the rat oncogenicity study and surface area was estimated by $(body\ weight)^{3/4}$.

Since the PRC published the above estimate they have agreed that low-dose extrapolation for fenbuconazole, based on rat thyroid tumors, is inappropriate given the EPA's policy regarding thyroid tumors and the data which exist for fenbuconazole. The PRC agrees that the more appropriate data set for the low-dose extrapolation and risk factor estimate is the mouse. From these data a $Q1^*$ of $(0.36 \times 10^{-2}(mg/kg/day)^{-1})$ is calculated when surface area is estimated by $(bodyweight)^{3/4}$. All estimates of dietary oncogenic risk are based on this risk factor.

Since fenbuconazole will not leach into groundwater (see below) there is no increased cancer risk from this source. Neither is fenbuconazole registered for residential use, so there is no risk from non-occupational residential exposure either. All estimates of excess risk to cancer are from dietary sources.

6. *Endocrine disruption*. The mammalian endocrine system includes estrogen and androgens as well as several other hormone systems. Fenbuconazole does not interfere with the reproductive hormones. Thus, fenbuconazole is not estrogenic or androgenic.

While fenbuconazole interferes with thyroid hormones in rats by increasing thyroid hormone excretion, it does so only secondarily and only above those dietary levels which induce metabolism in the liver. These effects are reversible in rats, and humans are far less sensitive to these effects than rats. The RfD protects against liver induction because it is substantially below the animal NOAEL. As noted previously, maximal human exposures are far below the RfD level, and effects on human thyroid will not occur at anticipated dietary levels.

We know of no instances of proven or alleged adverse reproductive or developmental effects to domestic animals or wildlife as a result of exposure to fenbuconazole or its residues. In fact, no effects should be seen because fenbuconazole has low octanol/water partition coefficients and is known not to bioaccumulate. Fenbuconazole is excreted within 48 hours after dosing in mammalian studies.

C. Aggregate Exposure and Risk

1. *Dietary exposure—Chronic exposure and risk*. Risk associated with chronic dietary exposure from fenbuconazole was assessed on two level using two dietary exposure models. In the first assessment, tolerance level residues were assumed and in the second assessment average field trial residues were used. Both assessments assumed 100% of crop treated, except for stone fruit in which 12.8% of crop treated was assumed 63 FR 31636, June 10, 1998, (FRL 5791-9). Residues in pulp from bagged bananas were used in the assessments, since only bagged bananas are used in commerce. The Anticipated Residue Contribution (ARC) from all existing food uses of fenbuconazole was assessed; these foods included stone fruit (except plums, and prunes), bananas, pecans, and blueberries).

The RfD used for the chronic dietary analysis is 0.03 mg/kg/day. Potential chronic exposures were estimated using NOVIGEN's Dietary Exposure Evaluation Model (DEEM Version 5.31), which uses USDA food consumption data from the 1989-1992 survey, and the EPA's Dietary Risk Evaluation System (DRES), which uses USDA food consumption data from 1977-1978. The existing fenbuconazole tolerances and average fenbuconazole residues result in ARCs that are equivalent to the following percentages of the RfD.:

Population Subgroup	DEEM[1] %RfD	DEEM[2] %RfD	DRES[1] %RfD	DRES[2] %RfD
U. S. Population (48 States)	0.2%	<0.01%	0.31%	0.06%
Nursing Infants (<1 year old)	0.4%	0.1%	1.47%	0.27%
Non-Nursing Infants (<1year old)	1.3%	0.2%	2.46%	0.45%

Population Subgroup	DEEM[1] %RfD	DEEM[2] %RfD	DRES[1] %RfD	DRES[2] %RfD
Children (1-6 years old)	0.5%	0.1%	0.74%	0.14%
Children (7-12 years old)	0.3%	<0.01%	0.44%	0.08%
Females (13+/nursing)	0.3%	<0.01%	0.28%	0.05%

[1] Assumes residues are present at tolerance levels and 100% of crop treated except stone fruit (12.8% of crop treated).
[2] Assumes residues are present at their average field residue levels and 100% of crop treated except stone fruit (12.8% of crop treated).

D. Aggregate Cancer Risk for U.S. Population

Fenbuconazole has been classified as a Group C Carcinogen with a Q,* value of 0.00359 mg/kg/day^{-1}. Assuming fenbuconazole residues are present at tolerance levels and assuming 100% crop treated, except stone fruit (12.8% of crop treated assumed), give a cancer risk assessment for existing food uses for the U.S. population of 3.31 x 10^{-7} for the DRES and DEEM analyses, respectively. Assuming fenbuconazole residues are present at average field residue levels and assuming 100% of crop treated, except stone fruit (12.8% of crop treated assumed), gives a cancer risk assessment for existing food uses for the U.S. population of 6.34 x 10^{-8} and 4.94 x 10^{-8} for the DRES and DEEM analyses, respectively.

The individual crop cancer risk assessments for bananas, stone fruit, pecans, and blueberries were 4.11 x 10^{-8}, 2.78 x 10^{-7}, 1.73 x 10^{-9}, and 9.74 x 10^{-9}, respectively (DRES analysis), and were 5.11 x 10^{-8}, 1.67 x 10^{-7}, 7.37 x 10^{-10}, and 1.38 x 10^{-8}, respectively (DEEM analysis).

1. *Drinking water.* Fenbuconazole has minimal tendency to contaminate groundwater or drinking water because of its adsorptive properties on soil, solubility in water, and degradation rate. Data from laboratory studies and field dissipation studies have been used in the USDA PRZM/GLEAMS computer model to predict the movement of fenbuconazole. The model predicts that fenbuconazole will not leach into groundwater, even if heavy rainfall is simulated. The modeling predictions are consistent with the data from environmental studies in the laboratory and the results of actual field dissipation studies. There are no data on passage of fenbuconazole through water treatment facilities and there are no State water monitoring programs which target fenbuconazole.

2. *Non-dietary exposure.* Fenbuconazole has no veterinary applications and is not approved for use in swimming pools. It is not labeled for application to residential lawns or for use on ornamentals, nor is fenbuconazole applied to golf courses or other recreational areas. Therefore, there are no data to suggest that these exposures could occur. Any acute exposures to children would come from dietary exposure or inadvertent dermal contact . As previously discussed, fenbuconazole is neither orally or dermally acutely toxic. Thus, there is a reasonable certainty that no exposure would occur to adults, infants or children from these sources.

E. Cumulative Effects

The toxicological effects of fenbuconazole are related to its effects on rodent liver. These are manifested in rats and mice differently. Fenbuconazole causes liver toxicity in rats and mice in the form of hepatocyte enlargement and enzyme induction. In rats the liver enzyme induction causes increased biliary removal of thyroxin and the hepatotoxicity leads to elevated thyroid stimulating hormone levels with subsequent development of thyroid gland hyperplasia and tumors. This process is reversible and demonstrates a dose level below which no thyroid gland stimulation can be demonstrated in rats. Liver toxicity in the mouse is manifest by hepatocyte enlargement, enzyme induction, and hepatocellular hyperplasia (cell proliferation). These processes are associated with the appearance of a small number of liver tumors. In both cases, rats and mice, the initiating event(s) do not occur below a given dose, i.e., the effects are nonlinear, and the processes are reversible. Therefore, since the tumors do not occur at doses below which hepatocyte enlargement and enzyme induction occur, the RfD protects against tumors because it is substantially below the NOAEL for liver effects and maximal human exposures are below the RfD. Effects on human thyroid will not occur at anticipated dietary levels. The mode of action data should be carefully considered in deciding the relevance of these high-dose animal tumors to human dietary exposure.

Extensive data are available on the biochemical mode of action by which fenbuconazole produces animal tumors in both rats and mice. However, there are no data which suggest that the mode of action by which fenbuconazole produces these animal tumors or any other toxicological effect is common to all fungicides of this class. In fact, the closest structural analog to fenbuconazole among registered fungicides of this class is not tumorigenic in animals even at maximally tolerated doses and has a different spectrum of toxicological effects.

F. Safety Determination.

1. *All crops (current food uses).* The exposure to fenbuconazole from all current food uses will utilize 1.3% (non-nursing infants < 1 year old) and 0.4% (nursing infants < 1 year old) of the RfD (DEEM analysis), and will utilize 2.46% (non-nursing infants < 1 year old) and 1.47% (nursing infants < 1 year old) of the RfD (DRES analysis), assuming residues are present at tolerance levels and assuming 100% of crop treated, except stone fruit (12.8% of crop treated assumed). The percent of the RfD that will be utilized by children 1-6 years old and 7-12 years old is 0.5 and 0.3%, respectively (DEEM analysis), and 0.74 and 0.44%, respectively (DRES analysis), assuming residues are present at tolerance levels and assuming 100% crop treated, except stone fruit.

2. *Stone Fruit (except plums and prunes).* The exposure to fenbuconazole from stone fruit (excluding plums and prunes) will utilize 1.1% of the RfD for non-nursing infants < 1 year old, 0.3% of the RfD for nursing infants < 1 year old, 0.4% of the RfD for children 1-6 years old, and 0.2% of the RfD for children 7-12 years old (DEEM analysis) assuming residues are present at tolerance levels and assuming 100% of crop treated, except stone fruit (12.8% of crop treated assumed).

3. *Bananas.* The exposure to fenbuconazole from bananas will utilize 0.2% of the RfD for non-nursing infants < 1 year old, 0.1% of the RfD for nursing infants < 1 year old, 0.1% of the RfD for children 1-6 years old, and 0.1% of the RfD for children 7-12 years old (DEEM analysis) assuming residues are present at tolerance levels and assuming 100% of crop treated, except stone fruit (12.8% of crop treated assumed).

4. *Pecans.* The exposure to fenbuconazole from pecans will utilize

<0.01% of the RfD for each of the population subgroups: non-nursing infants < 1 year old, nursing infants < 1 year old, children 1-6 years old, and children 7-12 years old (DEEM analysis) assuming residues are present at tolerance levels and assuming 100% of crop treated, except stone fruit (12.8% of crop treated assumed).

5. *Blueberries*. The exposure to fenbuconazole from blueberries, will utilize < 0.01% of the RfD for each of the population subgroups, non-nursing infants < 1 year old, nursing infants < 1 year old, children 1-6 years old, and children 7-12 years old (DEEM analysis) assuming residues are present at tolerance levels and assuming 100% of crop treated, except stone fruit (12.8% of crop treated assumed).

Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In either case, EPA generally defines the level of appreciable risk as exposure that is greater than 1/100 of the NOAEL in the animal study appropriate to the particular risk assessment. This hundredfold uncertainty (safety) factor/MOE exposure (safety) is designed to account for combined inter- and intra-species variability. EPA believes that reliable data support using the standard hundredfold margin/factor but not the additional tenfold margin/factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard margin/factor.

The Agency FQPA Safety Factor Committee removed the additional 10x safety factor to account for sensitivity of infants and children. Rohm and Haas Company concludes that there is a reasonable certainty that no harm will result from exposure to fenbuconazole residues to the U.S. population or to infants and children.

G. International Tolerances

There are no Codex maximum residue limits (MRLs) for fenbuconazole, but the fenbuconazole database was evaluated by the WHO and FAO Expert Panels at the Joint Meeting on Pesticide Residues (JMPR) in September, 1997. An ADI (RfD) of 0.03 mg/kg/day was proposed and accepted (Pesticide Residues in Food—WHO/FAO Report 1997; No. 145), and a total of 36 Codex MRLs, including MRLs for pecans, stone fruit, and bananas, have been submitted for review.

[FR Doc. 98–32426 Filed 12–4–98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 95–155]

Toll Free Service Access Codes

AGENCY: Federal Communications Commission.

ACTION: Notice; letter.

SUMMARY: The Network Services Division, Common Carrier Bureau, has issued a letter stating that 145 RespOrgs failed to report to Database Service Management, Inc., as required, that they gave notice to all of their subscribers having right of first refusal for set-aside 888 numbers. By December 11, 1998, these RespOrgs must explain why they failed to comply with this requirement and must describe their actions to remedy their non-compliance. RespOrgs that fail to submit explanations or that fail to provide satisfactory explanations will be subject to possible forfeiture penalties, decertification as RespOrgs, or fines, imprisonment, or both.

FOR FURTHER INFORMATION CONTACT: Marty Schwimmer 202–418–2334.

SUPPLEMENTARY INFORMATION: The Bureau's letter is attached.

Federal Communications Commission.

Anna M. Gomez,

Chief, Network Services Division, Common Carrier Bureau.

Attachment

November 24, 1998.

Mr. Michael Wade
President, Database Service Management, Inc.
6 Corporate Place
Room PYA—1F286
Piscataway, NJ 08854–4157

Re: RespOrg non-compliance with the set-aside 888 number right-of-first-refusal process—Requirement for specified RespOrgs to submit letters of explanation by December 11, 1998

Dear Mr. Wade: The Bureau's letter to you dated April 15, 1998, initiated the process for subscribers to exercise their right of first refusal to request 888 numbers that had been set aside for them. It required RespOrgs to give notice of this right to their subscribers. Further, among other things, it required RespOrgs, for each set-aside 888 number, to submit to DSMI either the subscriber's request to accept or reject an 888 set-aside number, with documentation, or certification that the subscriber did not respond to the notice.

The Bureau's letter to you dated May 15, 1998, extended to August 21, 1998, the time for RespOrgs to give the required notice to their subscribers, although it provided that requests received from subscribers after that date must still be processed. It also explained that the certification that RespOrgs were required to provide for subscribers who did not respond must include contact information containing the subscriber's name, address, and phone number, as well as the date and means by which the RespOrg notified the subscriber.

The attachment to this letter summarizes the RespOrgs' compliance with this process, using information provided by your staff in response to the Bureau's request. For each of 179 RespOrgs, the attachment shows the total percentage of requests and certifications of no response reported to DSMI as of October 5, 1998, based on the RespOrg's initial count of set-aside 888 numbers as of July 1998. It indicates that only 34 RespOrgs reported subscriber notification results for all of their set-aside 888 numbers (100%). Of the remaining 145 RespOrgs, 93 reported results for some but not all of their set-aside 888 numbers (0.1% to 99.7%), and 52 did not report any results for their set-aside 888 numbers (0%).

The Commission is concerned that a RespOrg's failure to report that it gave notice to each of its set-aside 888 number subscribers may indicate that the RespOrg is operating in defiance of Commission orders, that it is warehousing set-aside 888 numbers or the corresponding 800 numbers, or that it has falsely indicated that it has identified subscribers for those numbers. The Commission stated last year that it may penalize RespOrgs that warehouse toll free numbers, by imposing forfeiture penalties on them or referring them to the Department of Justice to determine whether a fine, imprisonment, or both are warranted, or may decertify them as RespOrgs. It also stated that RespOrgs that falsely indicate they have identified subscribers for particular numbers may be criminally liable for false statements under Title 18 of the United States Code. The Commission stated as follows:

''We conclude that the Commission's exclusive jurisdiction over the portions of the North American Numbering Plan that pertain to the United States, found at section 251(e)(1) of the Communications Act, as amended, authorizes the Commission to penalize RespOrgs that warehouse toll free numbers. We may impose a forfeiture penalty under section 503(b). In addition, if a person violates a provision of the Communications Act or a rule or regulation issued by the Commission under authority of the Communications Act, the Commission can refer the matter to the Department of Justice to determine whether a fine, imprisonment, or both are warranted under section 501 or section 502 of the Communications Act. We also may limit any RespOrg's allocation of toll free numbers or possibly decertify it as

a RespOrg under section 251(e)(1) or section 4(i). In addition, RespOrgs that falsely indicate that they have identified subscribers for particular numbers may be liable for false statements under Title 18 of the United States Code. . . .'' (footnotes omitted).

Toll Free Service Access Codes, *Second Report and Order and Further Notice of Proposed Rulemaking,* CC Docket No. 95–155, 12 F.C.C. Rcd. 11162 (1997).

In light of the above enforcement policy, the Bureau in this letter directs DSMI to forward a copy of this letter, with the attachment, to all RespOrgs. With this letter, the Bureau directs all RespOrgs that have reported less than 100% subscriber results to submit a letter to the Commission's Common Carrier Bureau, Network Services Division, by December 11, 1998, explaining why the process required by the Bureau was not completed as directed. Such RespOrgs must also describe any action they have taken or are now taking to remedy this apparent non-compliance with their legal obligations. The names of RespOrgs that fail to provide satisfactory explanation in their letters or that fail to submit letters altogether will be referred to the Bureau's Enforcement Division for action in accord with the Commission's enforcement policy.

Sincerely,

Anna M. Gomez,

Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 98–32458 Filed 12–4–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS NOTICE: 63 FR 65209, November 25, 1998.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, December 2, 1998.

CHANGE IN THE MEETING: The following topic was added to the open portion of the meeting:

- Federal Home Loan Bank Presidents' 1999 Base Salary Caps.

The Board determined that agency business required its consideration of this matter on less than seven days notice to the public and that no earlier notice of this change in the subject matter of the meeting was possible.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

William W. Ginsberg,

Managing Director.

[FR Doc. 98–32523 Filed 12–3–98; 1:01 pm]

BILLING CODE 6725–01–P

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Activities: Request for Comments on a New Information Collection Activity in Support of the Access Certificates for Electronic Certificates (ACES) Program

AGENCY: Federal Technology Service, GSA.

ACTION: Notice of request for approval of a new information collection entitled Access Certificates for Electronic Services (ACES).

SUMMARY: Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Technology Service (FTS) is publishing a summary of a proposed new information collection activity for public and agency comment. The proposed information collection activity is designed to support a new FTS program entitled Access Certificates for Electronic Services (ACES). The ACES Program is intended to facilitate and promote secure electronic communications between on-line automated information technology application systems authorized by law to participate in the ACES Program and users who elect to participate in the program, through the implementation and operation of digital signature certificate technologies. Individual digital signature certificates will be issued at no cost to individuals based upon their presentation of verifiable proof of identity to an authorized ACES Registration Authority. Business Representative digital signature certificates will be issued to individuals based upon their presentation of verifiable proof of identity and verifiable proof of authority from the claimed entity to an authorized ACES Registration Authority. If authorized by law, a fee may be charged for issuance of a Business Representative certificate.

DATES: Submit comments on or before February 5, 1999.

ADDRESSES: Address all comments concerning this notice to Stanley Choffrey, General Services Administration, Federal Technology Service, Office of Information Security, Room 5060, 7th and D Streets, SW., Washington, DC 20407, or e-mail to stanley.choffrey@gsa.gov.

FOR FURTHER INFORMATION CONTACT: Stanley Choffrey, General Services Administration, Federal Technology Service, Office of Information Security at (202) 708–7943, or by e-mail to stanley.choffrey@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. Purpose

The purpose of this notice is to consult with and solicit comments from the public and affected agencies concerning the proposed collection of information under the ACES Program in order to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of GSA, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, 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 the collection of information on those who are to respond.

Comments relating to any additional aspects and features of the ACES Program are also welcomed, and will be carefully considered.

B. Annual Reporting Burden

Respondents: 1,000,000; *annual responses:* 1,000,000; *average hours per response:* .15; *burden hours:* 250,000.

Copy of Proposal

A copy of this proposal may be obtained by contacting Stanley Choffrey at the above address.

Dated: November 30, 1998.

Ida M. Ustad,

Deputy Associate Administrator, Office of Acquisition Policy.

[FR Doc. 98–32381 Filed 12–4–98; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Request for Public Comment Concerning the Impact of the Adoption and Safe Families Act of 1997 on Adjudicated Juvenile Delinquents Whose Foster Care Placements are Funded Through Title IV–E of the Social Security Act

AGENCY: Administration on Children, Youth and Families, Administration for Children and Families, Department of Health and Human Services.

ACTION: Notice of request for public comment.

SUMMARY: The Children's Bureau, in the Administration on Children, Youth and Families, administers the title IV–E

foster care maintenance program which provides funds to States to assist them in meeting the needs of certain children who are removed from their homes and placed in foster care. Federal financial participation (FFP) is available for a portion of the costs States incur in their placement and care responsibilities for title IV–E eligible children. The Children's Bureau plans to issue guidance clarifying policy and regulations for the foster care maintenance program with respect to children who have been adjudicated delinquent. We think it is critical that we receive input from a wide variety of sources and perspectives prior to issuing any guidance. On July 28, 1998, Federal staff attended the National Juvenile Justice Roundtable on the Adoption and Safe Families Act of 1997 (ASFA) in Arlington, Texas to begin the consultation process for identifying and clarifying the issues related to applying the ASFA to children who are adjudicated delinquent. This notice invites public comment on issues and concerns which have been identified in the course of examining the ASFA and its implications for title IV–E eligible children who have been adjudicated delinquent. These comments will assist the Children's Bureau in clarifying the policy and regulatory framework within which title IV–E operates and is administered.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before January 6, 1999.

ADDRESSES: Mail written comments (in duplicate) to Kathy McHugh, Director, Division of Policy, Children's Bureau, 330 C St., SW., Washington, DC 20447. Respondents may also provide comments electronically at kmchugh@acf.dhhs.gov.

FOR FURTHER INFORMATION CONTACT: Joe Bock, Child Welfare Program Specialist, Children's Bureau, 330 C St., SW., Washington, DC 20447; (202) 205–9632. jbock@acf.dhhs.gov.

SUPPLEMENTARY INFORMATION: Congress authorized the title IV–E program with the intent that it would benefit children who were subjected to abuse and/or neglect in their homes. Some children who have been adjudicated delinquent, however, are appropriately served by the title IV–E program, as well. Specifically, those children who meet the title IV–E eligibility criteria and who present with child protection and/or dependency issues, in addition to their delinquent status, may be eligible for title IV–E foster care. States must meet all title IV–B and IV–E program and/or eligibility requirements with respect to children who are adjudicated delinquent, including the case plan and case review protections afforded them at sections 422(b)(10) and 471(a)(16) of the Social Security Act (the Act).

Eligibility of the Child

States have been challenged in their attempts to meet the title IV–B and IV–E requirements within a juvenile justice framework. Particularly challenging for States are the statutory eligibility requirements for a State to obtain judicial determinations to the effect that:

- Remaining at home is contrary to a child's welfare;
- The State agency (or the juvenile justice agency with an agreement that is in effect between it and the State child welfare agency) has made reasonable efforts to prevent the child's removal;
- The State agency (or the juvenile justice agency with an agreement that is in effect between it and the State child welfare agency) has made reasonable efforts to reunify the child and family; and
- The State agency (or the juvenile justice agency with an agreement that is in effect between it and the State child welfare agency) has made reasonable efforts to make and finalize an alternate permanent placement if the child is not able to return home.

Yet, these judicial determinations embody the critical protections that Congress requires with respect to children who are title IV–E eligible and differentiate between the adjudicated delinquents who are appropriately served through the title IV–E program and those who are not.

Eligibility of the Facility

States have also experienced difficulty in meeting title IV–E requirements in a juvenile justice framework with respect to claiming reimbursement for foster care maintenance payments.

The statute, at section 472(c)(2), specifically excludes ''. . . detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquent . . .'' from the definition of ''child-care institution,'' thereby prohibiting the expenditure of title IV–E funds for children placed in such facilities. Some States are inappropriately claiming title IV–E reimbursement for children placed in facilities that are not child-care institutions as defined at section 472(c)(2) of the Act and are, therefore, ineligible facilities.

On November 19, 1997, the President signed into law the Adoption and Safe Families Act of 1997, Public Law 105–89. The ASFA emphasizes and seeks to strengthen the original goals of Public Law 96–272: safety; permanency; and child and family well-being. It does so, in part, by emphasizing individual parental responsibility and State accountability for moving children to permanency in a timely manner through accelerated statutory time frames for meeting certain case review system requirements. These shorter time frames will increase the challenges to States in meeting title IV–B and IV–E requirements for the juvenile justice population.

The challenges presented in the ASFA have compelled us to review our policies regarding the application of title IV–B and IV–E program and/or eligibility requirements for children who are adjudicated delinquent. We request comments that address issues stemming from the following:

(1) The requirements to:

- Obtain judicial determinations regarding contrary to the welfare (section 472(a)(1) of the Act) and reasonable efforts (required at section 472(a)(1) and defined at section 471(a)(15) of the Act); and,
- Develop case plans, hold six-month administrative reviews, hold permanency hearings, and comply with the requirement to file a petition to terminate parental rights when a child has been in foster care for 15 out of the most recent 22 months (required at sections 422(b)(10) and 471(a)(16) of the Act and defined at sections 475(1), (5), and (6) of the Act);

(2) The requirements for ensuring children's safety, both in their homes and in foster care;

(3) The requirements for expediting permanency;

(4) Setting parameters for and defining appropriate child-care facilities, from a title IV–E perspective, in which children who are adjudicated delinquent may be placed; and

(5) The types of technical assistance States will need to implement the ASFA for the juvenile justice population.

Dated: November 20, 1998.

James A. Harrell,

Deputy Commissioner, Administration on Children, Youth and Families.

[FR Doc. 98–32388 Filed 12–4–98; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General and Health Care Financing Administration

Solicitation of Comments on the OIG/HCFA Special Advisory Bulletin on the Patient Anti-Dumping Statute

AGENCY: Office of Inspector General (OIG) and Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of Proposed Special Advisory Bulletin.

SUMMARY: This **Federal Register** notice seeks the input and comments of interested parties on a Special Advisory Bulletin being developed by the OIG and HCFA designed to address requirements of the patient anti-dumping statute and the obligations of hospitals to screen all patients seeking emergency services and provide stabilizing medical treatment to enrollees of managed care plans if their condition warrants it. In developing this proposed issuance and soliciting public comment, it is our goal to provide clear and meaningful advice with regard to the application of the anti-dumping provisions, and ensure greater public awareness of the hospitals' obligations in providing emergency medical services to those individuals insured by managed care plans.

DATES: To assure consideration, comments must be delivered to the address provided below by no later than 5 p.m. on January 6, 1999.

ADDRESSES: Please mail or deliver your written comments and recommendations to the following address: Office of Inspector General, Department of Health and Human Services, Attention: OIG–33–SFA, Room 5246, Cohen Building, 330 Independence Avenue, S.W., Washington, D.C. 20201.

We do not accept comments by facsimile (FAX) transmission. In commenting, please refer to file code OIG–33–SFA. 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 5541 of the Office of Inspector General at 330 Independence Avenue, S.W., Washington, D.C., on Monday through Friday of each week from 8:00 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Joel Schaer, Office of Counsel to the Inspector General, (202) 619–0089.

SUPPLEMENTARY INFORMATION: In an effort to identify and eliminate fraud, waste and abuse in the Department's health care programs, the OIG periodically develops and issues Special Fraud Alerts and, with the cooperation of HCFA, Advisory Bulletins to alert health care providers and program beneficiaries about potential problems. This proposed bulletin is being developed by the OIG and HCFA to address the principal requirements of the patient anti-dumping statute (section 1867 of the Social Security Act) and to discuss how the requirements of that statutory provision apply to individuals insured by managed care plans that require ''prior authorization'' for emergency services. We have attempted to conform this proposed bulletin with policies set forth in the HCFA State Operations Manual on Provider Certification (Transmittal No. 2, May 1998) which provides guidelines and investigative procedures for reviewing the responsibilities of Medicare participating hospitals.

Section 1867 of the Act imposes specific obligations on Medicare-participating hospitals that offer emergency services with respect to individuals coming to the hospital and seeking treatment of possible emergency medical conditions. Specifically, the draft Special Advisory Bulletin proposes to address: (1) The obligations of these hospitals in providing screening to all patients seeking emergency services and stabilizing emergency treatment to individuals seeking such care; (2) the special concerns in the provision of emergency services to enrollees of managed care plans; (3) the rules governing Medicare and Medicaid managed care plans with respect to prior authorization requirements and payment for emergency services; and (4) what types of practices will serve to promote compliance by hospitals with the patient anti-dumping statute when managed care enrollees seek emergency services. We would appreciate receiving specific comments, recommendations and suggestions on the issues discussed in this proposed bulletin.

Set forth below for comment is the proposed OIG/HCFA Special Advisory Bulletin addressing the patient dumping statute.

OBLIGATIONS OF HOSPITALS TO RENDER EMERGENCY CARE TO ENROLLEES OF MANAGED CARE PLANS

What Are the Obligations of Medicare-Participating Hospitals That Offer Emergency Services to Individuals Seeking Such Services?

- The anti-dumping statute (section 1867 of the Social Security Act; 42 U.S.C. 1395dd) sets forth the Federally-mandated responsibilities of Medicare-participating hospitals to individuals with potential emergency medical conditions.
- Under the anti-dumping statute, a hospital must provide to any person who comes seeking emergency services an appropriate medical screening examination sufficient to determine whether he or she has an emergency medical condition, as defined by statute. When appropriate, ancillary services routinely available at the hospital must be provided as part of the medical screening examination.
- If the person is determined to have an emergency medical condition, the hospital is required to stabilize the medical condition of the individual, within the staff and facilities available at the hospital, prior to discharge or transfer.
- If the patient's medical condition cannot be stabilized before a transfer requested by the patient (or determined to be in the patient's best interest by the responsible medical personnel), the hospital is required to follow very specific statutory requirements designed to facilitate a safe transfer to another facility.
- A hospital may not delay the provision of an appropriate medical screening examination or further medical examination and stabilizing medical treatment in order to inquire about the individual's method of payment or insurance status.
- Regulations implementing these statutory obligations are found at 42 CFR part 489. The anti-dumping statute is enforced jointly by the Health Care Financing Administration (HCFA) and the Office of Inspector General (OIG) of the U.S. Department of Health and Human Services (HHS).
- Sanctions that may be imposed by HHS for violations of the anti-dumping statute include the termination of the hospital's provider agreement, and the imposition of civil money penalties against both the hospital and the physician responsible for examination, treatment, or transfer of an individual. In addition, the anti-dumping statute provides for the exclusion of such physician if the violation is gross and flagrant or repeated.

Why Is There a Special Concern About the Provision of Emergency Services to Enrollees of Managed Care Plans?

Many managed care plans require their members to seek prior authorization for some medical services, including emergency services. As noted above, the anti-dumping statute prohibits a hospital's inquiry about a patient's method of payment or insurance status, or use of such

information, from delaying a screening examination or stabilizing medical treatment. It has come to our attention that some hospitals routinely seek prior authorization from a patient's primary care physician or from the plan when a managed care patient requests emergency services, since the failure to obtain authorization may result in the plan refusing to pay for the emergency services. In such circumstances, the patient may be personally liable for the costs.

A reasonable argument can be made that patients (other than those arriving in dire condition) should be informed when they request emergency services of their potential financial liability for services. Some would go further and argue that the hospital itself should seek prior approval from the patient's health plan for emergency services to preserve the patient's right to seek coverage for such services. However, our concern is that, such an inquiry may improperly or unduly influence patients to leave the hospital without receiving an appropriate medical screening examination. This result would be inconsistent with the goals of the anti-dumping statute and could leave the hospital exposed to liability under the statute.

Investigations of allegations of the anti-dumping statute violations across the country have persuaded the OIG and HCFA that managed care patients may be at risk of being discharged or transferred without receiving a medical screening examination, largely because of the problems inherent in seeking ''prior authorization.'' Hospitals sometimes are caught between the legal obligations imposed under the anti-dumping statute and the terms of agreements which they have with managed care plans. For example, some Medicaid managed care contractors, as a condition of contracting with hospitals to provide services to their enrollees, have attempted to require such hospitals to obtain prior authorization from the plan before screening or treating an enrollee in order to be eligible for reimbursement for services provided.

The OIG's and HCFA's view of the legal requirements of the anti-dumping statute in this situation is as follows. Notwithstanding the terms of any managed care agreements between plans and hospitals, the anti-dumping statute continues to govern the obligations of hospitals to screen and provide stabilizing medical treatment to individuals who come to the hospital seeking emergency services regardless of the individual's ability to pay. While managed care plans have a financial interest in controlling the kinds of services for which they will pay, and while they may have a legitimate interest in deterring their enrollees from over-utilizing emergency services, no contract between a hospital and a managed care plan can excuse the hospital from its anti-dumping statute obligations. Once a managed care enrollee comes to a hospital that offers emergency services, the hospital must provide the services required under the anti-dumping statute without regard for the patient's insurance status or any prior authorization requirement of such insurance.[1]

What About Arrangements Between Hospitals and Managed Care Plans for ''Dual Staffing'' of Emergency Departments?

Some managed care organizations (MCOs) and hospitals have entered into, or are considering entering into, arrangements whereby the hospital permits the MCO to station its own physicians in the hospital's emergency department, separate from the hospital's own emergency physician staff, for the purpose of screening and treating MCO patients who request emergency services. This kind of arrangement is known as ''dual staffing.'' In a dual staffing setting, two separate groups of physicians would be providing emergency care, perhaps using different policies and protocols, performing different procedures, using different referral practices and drug formularies, relying on different on-call physicians, and having different credentials.

It is believed by some that dual staffing in emergency departments can facilitate the expeditious provision of services to MCO patients by physicians and other practitioners in their own health plans, particularly when patients present in emergency departments in stable condition. However, some hospitals and emergency physicians have raised questions about how the requirements of the patient anti-dumping statute may affect dual staffing arrangements, and we have been considering how to respond. As interpreted by this Department, the statute requires that a hospital and its physicians provide medically adequate screening and stabilization, supported by professionally recognized standards of care, to individuals seeking emergency services. Theoretically, one could construct two equally good emergency service ''tracks,'' each adequately staffed and each with equally good access to all of the medical capabilities of the hospital, such that both MCO and non-MCO patients received equal access to screening and stabilizing medical treatment. This arrangement would seem to satisfy the requirements of the anti-dumping statute.

Absent such equivalency, implementation of dual staffing raises some concerns under the patient anti-dumping statute. For example, what if either the MCO or non-MCO track is understaffed or simply overcrowded, and a patient in a particular track is subjected to a significant delay in screening and stabilizing treatment, even though a physician in the alternative track was available to see the individual? What if the protocols, referral patterns, use of specialists and patient guidelines are substantially different between the MCO and non-MCO tracks such that two different standards of care are provided in performing screenings or stabilizing treatment? How can a hospital be sure that all patients requesting emergency services receive, as required by statute, an appropriate screening examination within the full capabilities of the hospital, and necessary stabilizing treatment within the capability of the staff and facilities of the hospital, if the MCO track operates independently from the hospital's own emergency care system? These are difficult questions, and we have not yet determined how to treat issues related to dual staffing under the patient anti-dumping act. As a result, we are specifically soliciting comments and suggestions from the public on this issue, and we expect to offer some specific guidance in this area in the final version of this Special Advisory Bulletin.

What are the Rules Governing Medicare and Medicaid Managed Care Plans with Respect to Prior Authorization Requirements and Payment for Emergency Services?

There are special requirements for managed care plans that contract with Medicare and Medicaid to provide services to beneficiaries of those programs. Congress has specified that Medicare and Medicaid managed care plans may not require prior authorization for emergency services, and must pay for such services, without

[1] Separate and apart from the anti-dumping statute, in accordance with sections 1857(g), 1876(i)(6), 1903(m)(5) and 1932(e) of the Social Security Act, the OIG (acting on behalf of the Secretary) has the authority to impose intermediate sanctions against Medicare and Medicaid contracting managed care plans that fail to provide medically necessary services, including emergency services, to enrollees where the failure adversely affects (or has a substantial likelihood of adversely affecting) the enrollee. Medicare and Medicaid managed care plans that fail to comply with the above provision are subject to civil money penalties of up to $25,000 for each denial of medically necessary services.

regard to whether the hospital providing such services has a contractual relationship with the plan. Under statutory amendments recently enacted in the Balanced Budget Act (BBA) of 1997 (Pub. L. 105–33),[2] Medicare and Medicaid managed care plans are prohibited from requiring prior authorization for emergency services, including those that ''are needed to evaluate or stabilize an emergency medical condition.'' Moreover, Medicare and Medicaid managed care plans are required to pay for emergency services provided to their enrollees. The obligation to pay for emergency services is based on a ''prudent layperson'' standard, which means that the need for emergency services should be determined from a reasonable patient's perspective at the time of presentation of the symptoms.[3]

What Practices Will Promote Compliance with the Anti-Dumping Statute by Hospitals When Managed Care Enrollees Seek Emergency Services?

The OIG and HCFA are concerned that discussion by hospital personnel with a patient regarding the possible need for prior authorization, or his or her potential financial liability for medical services provided by a hospital that offers emergency services, could influence patients to leave the emergency department without receiving an appropriate medical screening examination. Without also informing the patient of his or her rights to a medical screening examination and to stabilizing medical treatment if the patient's condition warrants it, a discussion about insurance, ability to pay and seeking prior authorization may impede a hospital's compliance with its obligation under the anti-dumping statute. Discussions between a hospital staff member and a patient regarding potential prior authorization requirements and their financial consequences that have the effect of delaying a medical screening are violations of the anti-dumping statute. Moreover, the OIG and HCFA believe that in the absence of an initial screening, the decision of a managed care plan regarding the need for treatment is likely to be ill-informed. Patients are entitled to receive a medical screening examination and stabilizing medical treatment under the anti-dumping statute regardless of a hospital's contract with a health plan that requires prior authorization. Accordingly, the OIG and HCFA suggest the following practices to minimize the likelihood that a hospital will violate the statute:

- *No Prior Authorization Before Screening or Stabilization.* It is not appropriate for a hospital to request or a health plan to require prior authorization before the patient has received a medical screening examination to determine the presence or absence of an emergency medical condition or before the patient's emergency medical condition is stabilized.[4]
- *No Financial Responsibility or Advanced Beneficiary Notification Forms.* Prior to performing an appropriate medical screening examination, the hospital should not ask a patient to complete a financial responsibility form or an advanced beneficiary notification form, and should not ask the patient to provide a co-payment for any services rendered. Such a practice could deter the patient from remaining at the hospital to receive care to which he or she is entitled and which the hospital is obligated to provide regardless of ability to pay, and could cause unnecessary delay.
- *Qualified Medical Personnel Must Perform Medical Screening Examination.* A hospital should ensure that either a physician or other qualified medical personnel (i.e., hospital staff approved by the hospital's governing body to perform certain medical functions) provides an appropriate medical screening examination to all individuals seeking emergency services. Depending upon the individual's presenting symptoms, this screening examination may range from a relatively simple examination to a complex one which requires substantial use of ancillary services available at the hospital and on-call physicians.
- *When a Patient Inquires About Financial Liability for Emergency Services.* If a patient inquires about his or her obligation to pay for emergency services, such an inquiry should be answered by a staff member who has been well trained to provide information regarding potential financial liability. This staff member also should be knowledgeable about the hospital's anti-dumping statute obligations and must clearly inform the patient that, notwithstanding the patient's ability to pay, the hospital stands ready and willing to provide a medical screening examination and stabilizing treatment, if necessary. Hospital staff should encourage any patient who believes that he or she may have an emergency medical condition to remain for the medical screening examination and to defer further discussion of financial responsibility issues until after the medical screening has been performed. If the patient chooses to withdraw his or her request for examination or treatment, a staff member with appropriate medical training must discuss the medical issues related to a ''voluntary withdrawal.''
- *Voluntary Withdrawal.* If an individual chooses to withdraw his or her request for examination or treatment at the presenting hospital, a hospital must perform the following: (1) offer the individual further medical examination and treatment within the staff and facilities available at the hospital as may be required to identify and stabilize an emergency medical condition; (2) inform the individual of the risks and benefits of such examination and treatment, and of the risks and benefits of withdrawal prior to receiving such examination and treatment; and (3) take all reasonable steps to secure the individual's written informed consent to refuse such examination and treatment. The medical record should contain a description of the examination, treatment, or both, if applicable, that was refused.

In the event that an individual, e.g., nurse, doctor, other emergency room staff member or patient, believes that a hospital may have violated the anti-dumping statute, that individual should report the alleged violation to the HCFA office in the region in which the hospital is located.

[2] See section 4001 of the BBA, which created section 1852(d) of the Act. Section 1852(d) covers emergency services and prior authorization for Medicare enrollees. Also, section 4704(a) of the BBA created section 1932(b) of the Act, which contains Medicaid provisions covering emergency services and prior authorization.

[3] With respect to Medicare, prior authorization requirements were already explicitly prohibited by regulations before the passage of the BBA for emergency services provided outside an HMO or competitive medical plan (42 CFR 417.414(c)(1)), and by implication for services provided within such a plan. Similarly, while the BBA clarified and codified the ''prudent layperson'' standard, a variation of this standard has always been part of the Medicare policy for managed care plans. However, all of these requirements are new to Medicaid.

[4] Of course, this would not preclude an emergency physician from contacting the patient's physician at any time to seek advice regarding the patient's medical history and needs that may be relevant to the medical screening and treatment of the patient. Further, a patient who has not already contacted his or her health plan is free to do so at any time during his or her wait for emergency services.

Dated: November 24, 1998.

June Gibbs Brown,

Inspector General.

Dated: November 24, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 98–32480 Filed 12–4–98; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4349–N–42]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: January 6, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 25, 1998.

David S. Cristy,

Director, IRM Policy and Management Division.

Title of proposal: Land Sales Registration, Purchase's Revocation Rights, Sales Practices and Standards, and Formal Procedures and Rules of Practice.

Office: Housing.

OMB Approval Number: 2502–0243.

Description of The Need for The Information and its Proposed Use: The Interstate Land Sales Full Disclosure Act requires developers to register subdivisions and provide each purchaser with a property report. Information is submitted to HUD to assure compliance with the Act and the implementing regulations.

Form Number: None.

Respondents: Business or Other For-Profit and State, Local or Tribal Government.

Frequency of Submission: Annually and Broadcasting.

Reporting Burden:

	Number of respondents	×	Frequence of response	×	Hours per response	=	Burden hours
Information Collection	1291		8.63		1.75		19,513

Total Estimated Burden Hours: 19,513.

Status: Reinstatement, with changes.

Contact: Anita Hart, HUD, (202) 708–0502, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

[FR Doc. 98–32448 Filed 12–4–98; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4349–N–43]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: January 6, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be

affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 30, 1998.

David S. Cristy,

Director, IRM Policy and Management Division.

Title of Proposal: Assessment of Neighborhood Networks.

Office: Policy and Development and Research.

OMB Approval Number: 2528–xxxx.

Description of The Need For The Information and Its Proposed Use: The purpose is to evaluate the impact of Neighborhood Networks on low-income families living in HUD-insured and assisted properties. More specifically, to determine the extent to which on-site access to computers and training resources influences the self-sufficiency, employability, and economic self-reliance of clients.

Form Number: None.

Respondents: Individuals or Households.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	×	Frequency of responses	×	House per response	=	Burden hours
	1215		1		.74		903

Total Estimated Burden Hours: 903.

Status: New Collection.

Contact: Priscila Prunella, HUD, (202) 708–3700, x5711, Joseph F. Lackey, Jr., OMB, (202) 394–7316.

[FR Doc. 98–32449 Filed 12–4–98; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4424–C–02]

Notice of Funding Availability for: The HUD-Administered Small Cities Community Development Block Grant (CDBG) Program—Fiscal Year 1999, and the Section 108 Loan Guarantee Program for Small Communities in New York State; Correction

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of Funding Availability (NOFA); correction.

SUMMARY: On Wednesday, November 25, 1998, HUD published a notice of funding availability (NOFA) announcing: (1) the availability of approximately $54,558,000 in Fiscal Year (FY) 1999 funding for the HUD-administered Small Cities Program in New York State under the Community Development Block Grant (CDBG) Program; and (2) the availability of a maximum of approximately $200,000,000–$250,000,000 in FY 1999 funding under the Section 108 Loan Guarantee program for small cities in New York State. Due to a typographical error, the November 25, 1998 NOFA incorrectly provided for an application deadline date of February 8, 1999. The application due date for this NOFA is February 3, 1999. The purpose of this document is to correct the application due date in the November 25, 1998 NOFA.

FOR FURTHER INFORMATION CONTACT: Yvette Aidara, State and Small Cities Division, Office of Community Planning and Development, Department of Housing and Urban Development, Room 7184, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1322 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Accordingly, FR Doc. 98–31516, Notice of Funding Availability for: the HUD-Administered Small Cities Community Development Block Grant (CDBG) Program—Fiscal Year 1999; and the Section 108 Loan Guarantee Program for Small Communities in New York State (FR–4424-N–01), published in the **Federal Register** on November 25, 1998 (63 FR 65486) is corrected as follows:

1. On page 65486, in column 2, the **DATES** section is corrected to read as follows:

DATES: Applications are due by February 3, 1999. Application kits may be obtained from and must be submitted to either HUD's New York or Buffalo Office. (The addresses for these offices are provided in Section II. of this NOFA.) In addition, application kits and additional information are available on HUD's website located at: www.hud.gov or by contacting Community Connections at (800) 998–9999.

Applications, if mailed, must be postmarked no later than midnight on February 3, 1999 and received within 10 calendar days of the deadline. If an application is hand-delivered to the New York or the Buffalo Office, the application must be delivered to the appropriate office by no later than 4:00 p.m. (local time) on February 3, 1999.

Application kits will be made available by a date that affords applicants no fewer than 45 days to respond to this NOFA. For further information on obtaining and submitting applications, please see Section II. of this NOFA.

The above-stated application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, HUD will treat as *ineligible for consideration* any application that is not received by 4:00 p.m. on, or postmarked by February 3, 1999. Applicants should take this procedure into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

2. On page 65487, in column 3, the first full paragraph in that column is corrected to read as follows:

If possible, an applicant should submit the abbreviated consolidated plan in advance of the Small Cities application due date. The latest time at which the abbreviated consolidated plan will be accepted by HUD for the HUD-administered Small Cities Program in New York will be February 3, 1999 (the application due date for the Small Cities application). *Failure to submit the abbreviated consolidated plan by the due date is not a curable technical deficiency.* Questions regarding the abbreviated consolidated plan should be directed to the appropriate HUD field office.

3. On page 65489, in column 3, the first sentence in Section I.E.1. (captioned ''General''), is corrected to read as follows:

E. Selection Criteria/Ranking Factors and Final Selection.

1. *General.* Complete applications received from eligible applicants by February 3, 1999 will be rated and scored by HUD.

4. On page 65490, in column 1, the final full paragraph in that column (captioned ''Note'') is corrected to read as follows:

Note: These standards will be used as benchmarks in judging program performance, but will not be the sole basis for determining whether the applicant is ineligible for a grant due to a lack of capacity to carry out the proposed project or program. Any applicant that fails to meet the percentages specified above may wish to provide updated data to HUD, either in conjunction with the application submission or under separate cover, but in no case will data received by HUD after February 3, 1999 be accepted, unless specifically requested by HUD.

5. On page 65497, in columns 2 and 3, Section II.B. (captioned ''Submitting Applications'') is corrected to read as follows:

B. *Submitting Applications.* A final application must be submitted to HUD no later than February 3, 1999. A final application includes an original and two photocopies. Final applications may be mailed, and if they are received after the deadline, must be postmarked no later than midnight, February 3, 1999. If an application is hand-delivered to the New York or Buffalo Offices, the application must be delivered by 4:00 p.m. on the application deadline date. Applicants in the counties of Sullivan, Ulster, Putnam, and in nonparticipating jurisdictions in the urban counties of Dutchess, Orange, Rockland, Westchester, Nassau, and Suffolk should submit applications to the New York Office. All other nonentitled communities in New York State should submit their applications to the Buffalo Office. Applications must be submitted to the HUD office at the addresses listed above in section II.A.

The above-stated application deadline is firm as to *date* and *hour.* In the interest of fairness to all competing applicants, HUD will treat as *ineligible for consideration* any application that is not received on, or postmarked by February 3, 1999. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

6. On page 65498, in column 1, Section II.C.2. (captioned ''Streamlined Application Requirements for Certain Applicants'') is corrected to read as follows:

2. Streamlined Application Requirements for Certain Applicants

Single Purpose applications submitted under the FY 1997/98 NOFA but not selected for funding will be reactivated for consideration under this NOFA, if the applicant notifies HUD in writing by February 3, 1999 that the applicant wishes the prior application to be considered in this competition. Applications which are reactivated may be updated, amended or supplemented by the applicant provided that such amendment or supplementation is received no later than the due date for applications under this NOFA. If there is no significant change in the application involving new activities or alteration of proposed activities that will significantly change the scope, location or objectives of the proposed activities or beneficiaries, there will be no further citizen participation requirement to keep the application active for a succeeding round or competition.

Dated: December 2, 1998.

Camille E. Acevedo,

Assistant General Counsel for Regulations.

[FR Doc. 98–32446 Filed 12–4–98; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4369–N–12]

Announcement of OMB Approval Number for the HOME Investment Partnerships Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Announcement of OMB Approval Number.

SUMMARY: The purpose of this notice is to announce the OMB approval number for the collection of information pertaining to the HOME Investment Partnership Program.

FOR FURTHER INFORMATION CONTACT: Mary Kolesar, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–2470. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), this notice advises that OMB has responded to the Department's request for approval of the information collection pertaining to the HOME Investment Partnerships Program. The OMB approval number for this information collection is 2506–0013, which expires on November 30, 2001.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number.

Dated: December 1, 1998.

John M. Simmons,

Acting Director for Office of Executive Services.

[FR Doc. 98–32447 Filed 12–4–98; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent to Issue a Draft Comprehensive Conservation Plan and Associated Environmental Assessment for Sevilleta National Wildlife Refuge, San Acacia, New Mexico

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) has prepared a draft Comprehensive Conservation Plan (CCP) and associated Environmental Assessment for the Sevilleta National Wildlife Refuge, San Acacia, New Mexico pursuant to the National Wildlife Refuge System Improvement Act of 1997, and National Environmental Policy Act of 1969, and its implementing regulations.

If the draft CCP is approved, various management objectives, strategies, and actions will be adopted inclusive of the following:

- Continue implementation of Mexican wolf captive propagation program on Refuge, and ensure continued operation within all regulations, protocols, and safety guidelines.
- Preserve Refuge habitat diversity and important habitat for threatened and endangered species by preserving and restoring habitats to their natural condition.
- Maintain a viable population of Silvery minnows on the Refuge's stretch of the Rio Grande river.
- Evaluate Refuge grasslands potential as an introduction site for the endangered northern Aplomado falcon.
- Protect threatened and endangered species on Refuge and adjacent properties through outreach, educational activities and effective enforcement of fish and wildlife laws.

- Promote and support the introduction of native threatened and endangered species on the Refuge.
- Insure integrity of all naturally occurring biotic communities on the Sevilleta NWR.
- Maintain migratory bird populations at healthy levels in the Upper/Middle Rio Grande Ecosystem.
- Reverse declining trends in quality and quantity of riparian/wetland habitats; restore, maintain, and enhance the species composition, aerial extent, and spatial distribution of riparian/wetland habitats.
- Protect, restore, and maintain upland terrestrial communities at the landscape level within the Upper/Middle Rio Grande Ecosystem.
- Use sound land use practices and management tools to protect upland terrestrial habitats in the Upper/Middle Rio Grande Ecosystem.
- Through the Rio Grande Initiative, preserve, enhance and restore hydrological regimes which perpetuate a healthy river ecosystem. The Initiative will result in the creation of partnerships which address water management, habitat enhancement and restoration, and impacts of non-native flora and fauna on native biodiversity and endangered species.
- Compile a data base of the baseline natural conditions, processes, and species associated within refuge ecosystems by October 2004.
- Attain baseline natural conditions, processes, and populations of species in 50% of each habitat type by 2010. When attainment is not possible, assess desired condition and implement adaptive management strategies.
- Restore and maintain natural hydrological regimes.
- Contribute to the integrity of the Upper Middle Rio Grande Watershed using sound management tools and practices.
- Develop partnerships, relationships, and communication to improve implementation of Refuge wildlife and habitat management goals.
- Minimize human impacts to Refuge ecosystems.
- Encourage research that improves management and monitoring of species, communities and processes on the Refuge and the Upper Middle Rio Grande.
- Permit research from a wide range of interested parties and institutions while protecting the faunal and floral components of the ecosystem from the detrimental aspects of human intrusion and manipulative research protocols.
- Minimize impacts of research activities.
- Provide the research community a unique opportunity to conduct wildlife related research which provides the Refuge with management direction.
- Obtain (purchase or mitigation) sufficient water rights to manage refuge wetlands associated with the Rio Grande.
- Acquire in stream flow rights for the perennial portion of the Rio Salado.
- Protect upland seeps, springs and wetlands of the Refuge.
- Provide the general public with high quality compatible wildlife dependent experiences on and off the Refuge.
- Provide the general public with high quality environmental education and wildlife dependent experiences on and off the Refuge.
- Develop sound management practices to protect cultural resources, within the scope of Part 614 of the Service Manual and all applicable Federal laws and regulations.
- Minimize obtrusive impacts to Refuge lands or adjacent lands.
- Document the need for additional staffing.
- Obtain adequate staffing to implement management plans benefitting the Middle Rio Grande Ecosystem both on and off Refuge lands.
- Effect improvements to facilities that will result in enhancement of Refuge capabilities and resources including the construction of an approximately 6,000 square foot visitor center/administrative complex, 2 1,500 foot staff residences, and a multi-unit living accommodation facility for refuge volunteers.
- Develop and apply the Ecosystem Management approach.
- Solicit input from involved agencies, institutions, and groups to help coordinate and evaluate Refuge activities.

DATES: The Service will be open to written comments through January 4, 1998.

ADDRESSES: Copies may be obtained by writing to: Mr. Tom Baca, Natural Resource Planner, Division of Refuge, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, NM 87103–1306. Comments should be submitted to: Lou Bridges, Project Coordinator, Research Management Consultants, Inc., 1746 Cole Blvd., Bldg. 21, Suite 300, Golden, CO 80401.

SUPPLEMENTARY INFORMATION: It is Service policy to have all lands within the National Wildlife Refuge System managed in accordance with an approved CCP. The CCP guides management decisions and identifies refuge goals, long-range objectives, and strategies for achieving refuge purposes. The planning process has considered many elements, including habitat and wildlife management, habitat protection and acquisition, public and recreational uses, and cultural resources. Public input into this planning process has assisted in the development of the draft documents. The CCP will provide other agencies and the public with a clear understanding of the desired conditions for the Refuges and how the Service will implement management strategies.

The Service intends to consider comments and advice generated in response to the draft documents prior to the preparation of a final CCP. The Service is furnishing this notice in compliance with Service CCP policy: (1) to advise other agencies and the public of the availability of the draft documents, and (2) to obtain suggestions and advice for consideration in preparation of final documents.

The Service anticipates that final CCP documents and any associated NEPA documents will be available by February 28 1998, or sooner.

Dated: November 23, 1998.

Geoffrey L. Haskett,

Deputy Regional Director.

[FR Doc. 98–32387 Filed 12–4–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–00–P and AA–01534]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(h)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(1), will be issued to Sealaska Corporation for 5.99 acres. The lands involved are in the vicinity of Yakutat, Alaska.

Lot 5, U.S. Survey No. 10271, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the JUNEAU EMPIRE. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until (January 6, 1999) to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an

appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Patricia K. Underwood,

Land Law Examiner, Branch of ANCSA Adjudication.

[FR Doc. 98–32386 Filed 12–4–98; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

National Park Service

New Orleans Jazz National Historical Park, Louisiana; Notice of Availability of Draft General Management Plan/ Environmental Impact Statement

SUMMARY: This Draft General Management Plan/Environmental Impact Statement (GMP/EIS) describes three conceptual alternatives. Alternative A is the no-action, or status quo, alternative and provides a baseline for comparison with the other alternatives. Alternative B emphasizes conveying the park's interpretive story through personal programs such as interpretive talks and demonstrations, interpreted performances ''informances,'' seminars, and performances. Educational activities would be given maximum emphasis in this alternative. It would allow the park to assist in the adaptive use of structures related to jazz. Interpretive programming would depend heavily on the involvement of local musicians and educators, thus supporting cultural preservation. Under this alternative, the visitor center would be located in the Old U.S. Mint. Alternative C emphasizes a strong partnership program with significant resources coming from partners. The extent and success of this alternative would depend on substantial support from these partners, and especially from the private sector. Interpretive media would be extensively used, and the size and scope of park educational and preservation programs would be guided by the development of partnerships. Under this alternative, the visitor center would be located at a complex in Louis Armstrong Park. Of these alternatives, the National Park Service's Proposed Action is Alternative C. Environmental impacts that would result from implementation of the alternatives are addressed in the document. Impact topics include cultural and natural resources, visitor experience, interpretation, education, transportation, and the socioeconomic environment.

DATES: The Draft GMP/EIS will be on review until January 25, 1999. Comments may be sent to the Superintendent at the following address.

ADDRESSES: A limited number of copies are available from the Superintendent at the following address.

FOR FURTHER INFORMATION CONTACT: Superintendent, New Orleans Jazz National Historical Park, 365 Canal Street, Suite 2400, New Orleans, LA 70130, Telephone: (504) 589–3882.

SUPPLEMENTARY INFORMATION: Several public meetings will be held concerning this document in the near future. Contact the park for information about these meetings. Notices will appear in local newspapers announcing these meetings.

Dated: November 21, 1998.

Daniel W. Brown,

Acting Regional Director, Southeast Region.

[FR Doc. 98–32383 Filed 12–4–98; 8:45 am]

BILLING CODE 4310–70–M

FOREIGN CLAIMS SETTLEMENT COMMISSION

[F.C.S.C. Meeting Notice No. 15–98]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

DATE AND TIME: Tuesday, December 15, 1998, 10:00 a.m.

SUBJECT MATTER:

A. Hearings on the Record on Objections to Proposed Decisions on claims against Albania, as follows:

Claim No. ALB–042 Xhani Femera et al., ALB–072 Thomas Michael Toma, ALB–220 Gjergji Gjeli, ALB–315 Afroditi Botsis.

B. Proposed Decisions on claims against Albania

STATUS: Open.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, N.W., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6002, Washington, DC 20579. Telephone: (202) 616–6988.

Dated at Washington, DC, December 2, 1998.

Judith H. Lock,

Administrative Officer.

[FR Doc. 98–32481 Filed 12–2–98; 5:23 pm]

BILLING CODE 4410–BA–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Wednesday, December 9, 1998.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Secretary of Labor* v. *Austin Powder Co.*, Docket No. YORK 95–57–M. (Issues include whether (1) substantial evidence supports the judge's credibility-based determination that the operator violated 30 CFR § 56.15005, and whether the violation was significant and substantial; (2) in the absence of a finding of unwarrantable failure on the part of the operator, the judge could find its foreman liable under the Mine Act section 110(c) for the violation, and whether substantial evidence supports that finding; and (3) despite the vacation of the unwarrantable failure finding, the judge could leave unreduced his penalty assessment against the operator, and whether substantial evidence supports his finding of high negligence.)

Any person attending an open meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629 / (202) 708–9300 for TDD Relay / 1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 98–32524 Filed 12–3–98; 12:51 pm]

BILLING CODE 6735–01–M

NUCLEAR REGULATORY COMMISSION

Atomic Safety and Licensing Board; Yankee Atomic Electric Company (Yankee Nuclear Power Station) License Termination Plan; Change in Filing Schedules and Date of Prehearing Conference

[Docket No. 50–029–LA–R, ASLBP No. 99–754–01–LA–R]

November 30, 1998.

Before Administrative Judges: Charles Bechhoefer, Chairman, Dr. Thomas S. Elleman, Thomas D. Murphy.

Notice is hereby given that, at the request of the Citizens Awareness Network, Inc. (based on recent physical injuries to its designated representative), and without objection from any party or other participant, the prehearing conference heretofore scheduled to commence on Wednesday, December 16, 1998, at the Grand Jury Room (top floor), Franklin County Courthouse, 425 Main Street, Greenfield, MA 01301, is hereby rescheduled to commence at 9:30 a.m., Tuesday, January 26, 1999 and, to the extent necessary, to continue on Wednesday, January 27, 1999 and Thursday, January 28, 1999, beginning at 9:00 a.m. each day, at the same location.

Because of the change in schedule, the schedule for the filing of contentions and responses thereto is also changed. Contentions are to be in our hands, and in those of parties and other participants, by close of business Tuesday, January 5, 1999 (replacing the current filing date of November 30, 1998). Responses to those contentions are to be in our hands (and those of other participants) by close of business Wednesday, January 20, 1998.

The purpose of the conference will be to determine whether either of the petitioners found by the Commission in CLI–98–21 to have standing—i.e., the New England Coalition on Nuclear Pollution, Inc. (NECNP) and the Citizens Awareness Network, Inc. (CAN)—have submitted admissible contentions conforming to the criteria set forth in 10 CFR 2.714(b) and (d). If so, they will become parties to the proceeding. The conference will also consider petitions, if any, from interested States or governmental bodies, as discussed by the Commission in CLI–98–21. Finally, to the extent necessary, the conference will consider discovery and future schedules for various aspects of the proceeding.

In accordance with 10 CFR 2.715(a), the Board will hear oral limited appearance statements at this prehearing conference. Any person not a party to the proceeding or a petitioner for intervention will be permitted to make such a statement, either orally or in writing, setting forth his or her position on issues of concern. These statements do not constitute testimony or evidence but may help the Board and/or parties in their deliberations on the extent of the issues to be considered.

Oral limited appearance statements may be given from 7:00 p.m. to 9:30 p.m. on Tuesday, January 26, 1999 (or such lesser time as is necessary to accommodate speakers who are present), at the same location as the site of the prehearing conference. (To the extent that the Board is apprised of a need to accommodate further speakers, it will attempt to do so at the beginning or end of any later session of the conference that may be necessary.) The number of persons making oral statements and the time allotted for each statement may be limited depending on the number of persons present at the designated time. (Normally, each oral statement may extend for up to five (5) minutes.) Written statements may be submitted at any time. Written statements, and requests for oral statements, should be submitted to the Office of the Secretary, Rulemakings and Adjudications Staff, U.S. Nuclear Regulatory Commission, Washington DC 20555. A copy of such statement or request should also be served on the Chairman of this Licensing Board. (Persons desiring to make oral statements who have filed a written request will be given priority over those who have not filed such a request.)

Documents relating to this application are on file at the Local Public Document Room, located at the Greenfield Community College, 1 College Drive, Greenfield, MA 01301, as well as at the Commission's Public Document Room, the Gelman Building, 2120 L St., NW, Washington DC 20037.

It is so ordered.

Rockville, Maryland, November 30, 1998.

For the Atomic Safety and Licensing Board.

Charles Bechhoefer,

Chairman, Administrative Judge.

[FR Doc. 98–32395 Filed 12–4–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Natural Resources Defense Council; Petition

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Receipt of Petition for U.S. Nuclear Regulatory Commission Action.

Notice is hereby given that by petition dated October 15, 1998, the Natural Resources Defense Council (NRDC) has requested that the U.S. Nuclear Regulatory Commission (NRC) exert authority to ensure that the United States Army Corps of Engineers' (the ''Corps'') handling of radioactive materials in connection with the Formerly Utilized Sites Remedial Action Program (FUSRAP) is effected in accord with properly issued license and all other applicable requirements. As NRDC notes in its petition, FUSRAP began in 1974 as a program of the Department of Energy (DOE), and that DOE had identified a total of 46 sites for cleanup under FUSRAP. By 1997, cleanup of 25 of these sites had been completed. There are currently 21 sites still in need of remediation. In October 1997, Congress transferred funding for FUSRAP from DOE to the Corps. NRDC believes that the Corps should obtain an NRC license to conduct activities under FUSRAP. At this time, the NRC has not required the Corps to obtain a license.

The request has been referred to the Director of the Office of Nuclear Material Safety and Safeguards. A copy of the petition is being sent to DOE and the Corps, and DOE and the Corps are being given the opportunity to comment. Appropriate action will be taken on this petition within a reasonable time.

FOR FURTHER INFORMATION CONTACT: John Lusher, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T7–J9, Washington, DC 20555. Telephone 301/415–7694. A copy of the petition is available for inspection at the Commission's Public Document Room at 2121 L Street, NW, Washington, DC 20555.

Dated at Rockville, Maryland, this 30th day of November 1998.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–32393 Filed 12–4–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Fixed Gauges Licenses,'' Dated October 1998

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is announcing the availability of NUREG–1556, Volume 4, ''Consolidated Guidance about Materials Licenses: Program-Specific Guidance about Fixed Gauges Licenses,'' dated October 1998.

ADDRESSES: Copies of NUREG–1556, Vol. 4, may be obtained by writing to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. A copy of the document is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Sally L. Merchant, Mail Stop TWFN 9–F–31, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–415–7874.

SUPPLEMENTARY INFORMATION: On December 23, 1997 (62 FR 67100), NRC announced the availability of draft NUREG–1556, Volume 4, ''Consolidated Guidance about Materials Licenses: Program-Specific Guidance about Fixed Gauges Licenses,'' dated October 1997, and requested comments on it. This draft NUREG report was the fourth program-specific guidance developed to support an improved materials licensing process. The NRC staff considered all the comments, including constructive suggestions to improve the document, in the preparation of the final NUREG report.

The final version of NUREG–1556, Volume 4, is now available for use by applicants, licensees, NRC license reviewers, and other NRC staff. It supersedes the guidance for applicants and licensees previously found in Draft Regulatory Guide and Value/Impact Statement, FC 404–4, ''Guide for the Preparation of Applications for Licenses for the Use of Sealed Sources and Nonportable Gauging Devices,'' dated January 1985, in Office of Nuclear Material Safety and Safeguards (NMSS) Policy and Guidance Directive (P&GD), FC 85–4, ''Standard Review Plan for Applications for Use of Sealed Sources and Nonportable Gauging Devices,'' dated February 6, 1985, and in NMSS P&GD, FC 85–8, Revision 1, ''Licensing of Fixed Gauges and Similar Devices,'' dated June 29, 1988. In addition, the draft report also contained information found in pertinent Technical Assistance Requests and Information Notices. NRC staff will use this final report in reviewing these applications.

NUREG–1556, Volume 4, will also be available electronically approximately 1 month after publication of this notice by visiting NRC's Home Page (http://www.nrc.gov) and choosing ''Nuclear Materials,'' and then ''NUREG–1556, Volume 4.''

Small Business Regulatory Enforcement Fairness Act

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

Dated at Rockville, Maryland, this 30th day of November, 1998.

For the Nuclear Regulatory Commission.

Donald A. Cool,

Director, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–32392 Filed 12–4–98; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Consolidated Guidance about Materials Licenses: Program-Specific Guidance About Master Materials Licenses, Availability of Draft NUREG

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of availability and request for comments.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is announcing the availability of and requesting comment on draft NUREG–1556, Volume 10, ''Consolidated Guidance about Materials Licenses: Program-Specific Guidance about Master Materials Licenses,'' dated October 1998.

NRC is using Business Process Redesign techniques to redesign its materials licensing process, as described in NUREG–1539, ''Methodology and Findings of the NRC's Materials Licensing Process Redesign.'' A critical element of the new process is consolidating and updating numerous guidance documents into a NUREG series of reports. This draft NUREG report is the tenth program-specific guidance developed to support an improved materials licensing process.

The guidance is intended for use by Federal applicants and licensees, and NRC staff. This document updates the guidance for applicants and licensees previously found in Policy and Guidance Directive (P&GD) 6–02, Revision 1: ''Standard Review Plan (SRP) for License Application for Master Material License,'' dated September 25, 1997. Note that this document is strictly for public comment and is not for use in preparing or reviewing applications for Master Materials licenses until it is published in final form. It is being distributed for comment to encourage public participation in its development.

DATES: The comment period ends March 8, 1999. Comments received after that time will be considered if practicable.

ADDRESSES: Submit written comments to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand-deliver comments to 11545 Rockville Pike, Rockville, Maryland, between 7:15 a.m. and 4:30 p.m. on Federal workdays. Comments may also be submitted through the Internet by addressing electronic mail to dlm1@nrc.gov.

Those considering public comment may request a free single copy of draft NUREG–1556, Volume 10, by writing to the U.S. Nuclear Regulatory Commission, ATTN: Mrs. Sally L. Merchant, Mail Stop TWFN 9–F–31, Washington, DC 20555–0001. Alternatively, submit requests through the Internet by addressing electronic mail to slm2@nrc.gov. A copy of draft NUREG–1556, Volume 10, is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555–0001.

FOR FURTHER INFORMATION CONTACT: Mrs. Sally L. Merchant, Mail Stop TWFN 9–F–31, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–7874; electronic mail address: slm2@nrc.gov.

Electronic Access

Draft NUREG–1556, Volume 10, will be available electronically by visiting NRC's Home Page (http://www.nrc.gov/

NRC/nucmat.html) approximately 4 weeks after the publication date of this notice.

Dated at Rockville, Maryland, this 30th day of November, 1998.

For the Nuclear Regulatory Commission.

Donald A. Cool,

Director, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–32394 Filed 12–4–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Unity Bancorp, Inc., Common Stock, No Par Value) File No. 1–12431

December 1, 1998.

Unity Bancorp, Inc. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the American Stock Exchange, Inc. (''Amex'' or ''Exchange'').

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

On August 20, 1998, the Board of Directors of the Company unanimously approved a resolution to withdraw the Company's Security from trading on the Exchange and to list the Security on the Nasdaq. In making the decision to withdraw its Security from listing on the Exchange, the Company considered the direct and indirect costs and benefits involved and determined that trading on the Nasdaq better suited its needs. Trading in the Company's Security on the Nasdaq commenced at the opening of business on September 21, 1998.

The Company has complied with Rule 18 of the Amex by notifying Amex of its intention to withdraw its Security from listing on the Exchange by letter dated August 24, 1998, and by filing a copy of the resolution with the Exchange. The Exchange replied by letter dated August 26, 1998, advising that the Exchange would not interpose any objection to such action, nor require the Company to send common stockholders any statement with respect thereto.

The Company also originally intended to delist its Common Stock Purchase Warrants (''Warrants'') from Amex and to list the Warrants on Nasdaq. The Warrants, however, did not meet the Nasdaq's float requirement and the Company elected to keep the Warrants on the Amex. By letter dated September 14, 1998, the Amex consented to this procedure.

Any interested person may, on or before December 22, 1998, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–32380 Filed 12–4–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40723; File No. SR–NASD–98–52]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to the Proposed Rule Change Relating to Supervision of Correspondence

November 30, 1998.

I. Introduction

On July 24, 1998, the National Association of Securities Dealers, Inc. (''NASD'') or ''Association''), through its wholly-owned subsidiary, the NASD Regulation, Inc. (''NASDR''), submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NASD Rule 3010 to state that firms must review incoming, written correspondence to identify customer complaints and funds. On August 26, 1998, the NASDR submitted Amendment No. 1 to the proposed rule change.[3]

The proposed rule change, as amended, was published for comment in the **Federal Register** on September 3, 1998.[4] Four comment letters were received on the proposal.[5] On November 12, 1998, the NASDR filed Amendment No. 2 to the proposed rule change.[6] The Commission solicits comments on Amendment No. 2 from interested persons. This order approves the proposed rule change and Amendment No. 1 thereto and approves Amendment No. 2 to the proposed rule change on an accelerated basis.

II. Background and Description of the Proposal

In December 1997, the SEC approved rule amendments and a Notice to Members that were designed to allow firms to develop flexible supervisory procedures for the review of correspondence with the public.[7] The amendments were intended to recognize the growing use of electronic communications such as ''e-mail'' while still providing for effective supervision. Notice to Members 98–11, issued by the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Mary N. Revell, Associate General Counsel, NASDR, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated August 24, 1998 (''Amendment No. 1''). In Amendment No. 1, NASDR proposes to replace the word ''should'' in the text of the proposed rule with the word ''must.''

[4] *See* Securities Exchange Act Release No. 40372 (August 27, 1998), 63 FR 47059..

[5] *See* Letters to Jonathan G. Katz, Secretary, Commission, from Michael L. Kerley, Vice President and Chief Legal Officer, MML Investors Services, Inc., dated September 18, 1998 (''MML Letter''); Theodore A. Mathas, President NYLIFE Securities, dated September 23, 1998 (''NYLSEC Letter''); Janet G. McCallen, Executive Director, International Association for Financial Planing, dated September 23, 1998 (''IAFP Letter''); and Joseph P. Savage, Assistant Counsel, Investment Company Institute, dated September 24, 1998 (''ICI Letter'').

[6] *See* Letter from Mary N. Revell, Associate General Counsel, NASDR, to Katherine A. England, Assistant Director, Division, Commission, dated November 12, 1998 (Amendment No. 2''). In Amendment No. 2, in addition to making several technical amendments, the NASDR addresses the issues raised in the comment letters. The NASDR proposes to revise its draft Notice to Members to clarify that: (1) registered representatives can forward opened mail; (2) maintenance of a log should be only for ''securities'' products; and (3) customers should be informed that they can contact a central office of the member firm for any reason, including to file a complaint. The NASDR also proposes to specifically state that member firms have a legal right to review incoming, written correspondence. Finally, the NASDR proposes to change the effective date of the new amendments to 60 days following publication of its Notice to Members.

[7] *See* Securities Exchange Act Release No. 39510 (December 31, 1997) 63 FR 1131 (January 8, 1998).

NASD in January 1998, announced approval of the rule amendments, the effective date of the new rules, and provided guidance to firms on how to implement these rules. Subsequent to Commission approval of the amendments, but before the amended rules went into effect, the Commission received 14 comment letters, primarily from members in the insurance industry, objecting to certain provisions in the new rules.[8] The commenters primarily objected to a provision in Notice to Member 98–11 which states that firms will be required to review all incoming, written correspondence directed to registered representatives and related to a member's investment banking or securities business. The NASDR added this provision to Notice to Members 98–11 to address two regulatory concerns raised by the Commission: (1) ensuring that firms capture all customer complaints; and (2) preventing registered representatives from taking cash or checks out of customer letters.

The commenters stated that it would be very difficult or impossible for a registered principal to conduct a pre-distribution review of all incoming, written correspondence, particularly correspondence received by registered representatives in small, one- or two-person offices. In response to these concerns, the effective date of the requirement to review all incoming, written correspondence was delayed to allow the NASDR and member firms time to develop and implement alternative, workable procedures for the review of incoming, written correspondence that addresses the regulatory concerns about preventing misappropriation of customer funds and diversion of customer complaints.[9] The rule amendments and all other provisions in the Notice became effective on April 7, 1998.[10]

NASDR Rule 3010(d)(2) currently requires each member to develop written policies and procedures for review of correspondence with the public relating to its investment banking or securities business tailored to its structure and the nature and size of its business and customers. The NASDR proposes to amend the rule to state that these procedures must include review of incoming, written correspondence directed to registered representatives and related to the member's investment banking or securities business to properly identify and handle customer complaints, funds, and securities. This proposed amendment will clarify that firms must develop supervisory procedures that specifically address the regulatory concerns identified by the Commission.

The accompanying Notice to Members will provide guidance on how to implement the proposed rule change.[11] In particular, the Notice states that, in conducting reviews of incoming, written correspondence to identify customer complaints and funds, where the office structure permits review of all correspondence, members should designate a registered or associated person to open and review correspondence prior to use or distribution to identify customer complaints and funds. The designated person must not be supervised or under the control of the registered person whose correspondence is opened and reviewed. Unregistered persons who have received sufficient training to enable them to identify complaints and checks would be permitted to review correspondence.

Where the office structure does not permit the review of correspondence prior to use or distribution, the Notice states that the firm would have to employ alternative procedures reasonably designed to assure adequate handling of complaints and checks. Procedures that could be adopted include the following:

- After opening his or her own mail, the registered representative can forward incoming, written correspondence related to the firm's investment banking or securities business to an Office of Supervisory Jurisdiction (OSJ) or a branch manager for review on a weekly basis;
- Maintenance of a separate log for all checks received and securities products sold, which is forwarded to the supervising branch on a weekly basis;
- Communication to clients that they can contact the broker/dealer directly for any matter, including the filing of a complaint and provides them with an address and phone number of a central office of the broker/dealer for this purpose; and
- Branch examination verification that the procedures are being followed.

The Notice also states that, regardless of the method used for initial review of incoming, written correspondence, as with other types of correspondence, Rule 3010(d)(1) would still require review by a registered principal of some of each registered representative's correspondence with the public relating to the member's investment banking or securities business.

III. Summary of Comments

The Commission received four comment letters on the proposed rule change.[12] Two of the commenters generally opposed the proposal;[13] two of the commenters generally supported the proposal.[14] The commenters opposing the proposal believe that any possible benefits of the proposal are outweighed by the associated burdens.[15] Specifically, the proposal's opponents believe that even if a member firm's business structure permits the review of incoming, written correspondence prior to use or distribution, NASD Rule 3010 should not require such review.[16] Instead, member firms should be permitted the flexibility to design their own procedures to identify customer complaints and funds.[17] The NASDR has not modified its proposal in response to these comments.

One commenter also recommends that NASDR should eliminate the ''requirements'' to forward correspondence and logs to a reviewer on a weekly basis and instead, to permit review on a regular basis.[18] In response, the NASDR notes that its proposed Notice to Members does not establish ''requirements'' for those member firms with office structures that do not permit

[8] *See* Letters to Jonathan G. Katz, Secretary, Commission, from Carl B. Wilkerson, American Council of Life Insurance, dated January 9, 1998 and January 29, 1998; Beverly A. Byrne, BenefitsCorp Equities, Inc., dated January 26, 1998; Michael S. Martin, The Equitable Life Assurance Society of the United States, dated January 29, 1998; Janet G. McCallen, International Association for Financial Planning, dated February 13, 1998; W. Thomas Boulter, Jefferson Pilot Financial, dated January 28, 1998; Leonard M. Bakal, Metropolitan Life Insurance Company and MetLife Securities, Inc., dated January 28, 1998; Michael L. Kerley, MML Investors Services, Inc. dated January 26, 1998; Mark D. Johnson, The National Association of Life Underwriters, dated February 5, 1998; Theodore Mathas, NYLIFE Securities, dated January 16, 1998 and January 29, 1998; Beverly A. Byrne, One Orchard Equities, Inc., dated January 26, 1998; Dodie Kent, Pruco Securities Corporation, dated January 29, 1998; and James T. Bruce, Wiley, Rein & Fielding, on behalf of the Electronic Messaging Association, dated January 30, 1998.

[2] *See* Securities Exchange Act Release Nos. 39665 (February 13, 1998) 63 FR 9032 (February 23, 1998); 39866 (April 14, 1998) 63 FR 19778 (April 21, 1998); and 40178 (July 7, 1998) 63 FR 37911 (July 14, 1998).

[10] *See* Securities Exchange Act Release No. 39866, *supra* note 9.

[11] The Notice that will be issued when this proposed rule is approved will state that the requirement set forth in Notice to Members 98–11 is no longer applicable and has been superseded by the amendment to Rule 3010(d)(2) and the guidance provided in the Notice.

[12] *See* note 5, *supra.*

[13] *See* NYLSEC Letter and ICI Letter, *supra* note 5.

[14] *See* MML Letter and IAFP Letter, *supra* note 5.

[15] *See* NYLSEC Letter and ICI Letter, *supra* note 5.

[16] *Id.*

[17] *Id.*

[18] *See* NYLSEC Letter, *supra* note 5.

review of all incoming correspondence.[19] Instead, the proposed Notice to Members provides several examples of alternative procedures that member firms might employ to assure adequate handling of customer complaints and funds.

One commenter requests that if the proposal is adopted, the effective date of the amendments should be postponed for six months to provide member firms with sufficient time to implement the additional requirements.[20] The NASDR declines to postpone the effective date of the amendments for six months, noting that member firms have been on notice since the issuance of NASD's Notice to Members 98–11 in January 1998 that some type of review of incoming, written correspondence would be required. To provide member firms with some time to implement the required changes, the NASDR proposes to change the effective date of the new amendments to 60 days following publication of the Notice to Members announcing Commission approval of the proposal.[21]

In addition, one commenter suggests that the rule specify that if a member firm doesn't normally receive written correspondence directed to register representatives, the member should not have to develop procedures to address such correspondence.[22] The NASDR has not modified its proposal in response to this comment.

One commenter requests that the NASDR specifically state that member firms have a legal right to review incoming mail, to parallel a similar statement made by the New York Stock Exchange.[23] In response, the NASDR proposes to revise its draft Notice to Members to include such a statement.[24]

Another commenter recommends that the NASDR clarify in the examples provided in its Notice to Members that: (1) Registered representatives can forward opened mail; (2) maintenance of a log should be only for ''securities'' products; and (3) customers should be informed that they can contact a central office of the member firm for any reason, including to file a complaints.[25] The NASDR proposes to revise its draft Notice to Members to implement the commenter's recommendations.[26]

[19] *See* Amendment No. 2, *supra* note 6.

[20] *See* NYLSEC Letter, *supra* note 5.

[21] *See* Amendment No. 2, *supra* note 6.

[22] *See* ICI Letter, *supra* note 5.

[23] *See* MML Letter, *supra* note 5.

[24] *See* Amendment No. 2, *supra* note 6.

[25] *See* IAFP Letter, *supra* note 5.

[26] *See* Amendment No. 2, *supra* note 6.

IV. Discussion

After careful review, 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 association.[27] Specifically, the Commission believes the proposal is consistent with the requirements of Section 15A(b)(6) of the Act[28] in that it is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest. The Commission believes that the proposal, which clarifies member firms' responsibilities with respect to the review of incoming, written correspondence, is designed to protect existing and prospective customers by ensuring that customer complaints and customer funds and securities are handled properly.

The NASDR proposes to amend NASD Rule 3010 to require that member firms' written procedures regarding the review of correspondence must include a review of incoming, written correspondence directed to registered representatives to properly identify and handle customer complaints and to ensure that customer funds and securities are handled in accordance with firm procedures. In its draft Notice to Members, the NASDR explains that the method used in conducting such reviews will depend on the firm's particular office structure. Where the office structure permits review of all correspondence, the NASDR will require that member firms designate an individual to open and review such correspondence prior to use or distribution to identify customer complaints and funds. The Commission agrees that wherever practicable, prior review of incoming, written correspondence should be mandated, to protect customer interests and possibly, reduce member firms' potential liability.

The Commission recognizes, however, that there may be circumstances in which such prior review of incoming, written correspondence is not practical. In such cases, the Commission believes that the NASDR's proposal to require member firms to employ alternative procedures reasonable designed to assure adequate handling of customer complaints, funds, and securities is reasonable. The Commission believes that member firms that do not require prior review of all incoming, written correspondence should require, at a minimum, some combination of those alternative procedures provided by the NASDR as an example, or similar procedures, rather than relying on only one alternative procedure. The Commission believes that employing more than one alternative procedure should serve to provide additional assurances that incoming, written correspondence is handled appropriately.

The Commission notes that the proposal requires the review by a registered principal of some of each registered representative's correspondence with the public relating to the member firm's investment banking or securities business, regardless of the method used for the initial review of incoming, written correspondence. The Commission believes that this requirement should ensure that appropriate persons within the firm will undertake to supervise the activities of the firm's registered representatives. The Commission expects that in the event that the firm learns of any suspect activities on the part of any of its registered representatives, the firm will commence a more thorough review of that representative's activities, including his/her correspondence with the public.

The Commissions finds good cause for approving proposed Amendment No. 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. In Amendment No. 2, the NASDR addresses the concerns raised in the four comment letters received by the Commission on this proposal. Amendment No. 2 modifies the original filing and the accompanying draft Notice to Members only slightly, in response to specific comments raised by interested parties. Specifically, Amendment No. 2 clarifies that member firms have the legal right to review incoming written correspondence and that the rules apply to the member firms' investment banking and securities business. As the modifications proposed in Amendment No. 2 are reasonable and do not significantly alter the original proposal, the Commission believes that Amendment No. 2 raises no issues of regulatory concern. Accordingly, the Commission believes that it is consistent with Section 15A(b)(6) of the Act[29] to approve Amendment No. 2 to the proposed rule change on an accelerated basis.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and

[27] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[28] 15 U.S.C. 78o–3(b)(6).

[29] 15 U.S.C. 78o–3(b)(6).

arguments concerning Amendment No. 2, including whether Amendment No. 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, 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, 450 Fifth Street, NW, Washington, DC 20549. Copies of all such filings will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–98–52 and should be submitted by December 28, 1998.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[30] that the proposed rule change (SR–NASD–98–52), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[31]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32400 Filed 12–4–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40718; File No. SR–NASD–98–96]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Correcting Cross-References in Rules to NASD By-Laws

November 30, 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 19, 1998, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly-owned regulatory subsidiary, NASD Regulation, Inc. (''NASD Regulation''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by 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 correct cross-references in the NASD Rules to the NASD By-Laws. The text of the proposed rule change is set forth below. Proposed new language is italicized; proposed deletions are in brackets.

Rule 0112. Effective Date

The Rules shall become effective as provided in Section 1 of Article [XII] *XI* of the By-Laws.

Rule 0120. Definitions

* * * * *

(i) ''Member''

The term ''member'' means any individual, partnership, corporation or other legal entity admitted to membership in the Association under the provisions of Articles [II and] III *and IV* of the By-Laws.

* * * * *

Rule 1060. Persons Exempt from Registration

(a) No change.

(b) No change.

(1) the member firm has assured itself that the nonregistered foreign person who will receive the compensation (the ''finder'') is not required to register in the U.S. as a broker/dealer nor is subject to a disqualification as defined in Article [II] *III*, Section 4 of the Association's By-Laws, and has further assured itself that the compensation arrangement does not violate applicable foreign law;

* * * * *

Rule 1100. Foreign Associates

(a) No change.

(b) No change.

(1) Such person is not subject to any of the prohibitions to registration with the Association contained in Article [II] *III*, Section 4 of the By-Laws of the Association.

* * * * *

(c) In the event of the termination of the employment of a Foreign Associate, the member must notify the Association immediately by filing a notice of termination as required by Article [IV] *V*, Section 3 of the By-Laws.

* * * * *

IM–2110–4. Trading Ahead of Research Reports

* * * * *

In accordance with Article VII, Section 1(a)[(2)](*ii*) of the NASD By-Laws, the Association's Board of Governors has approved the following interpretation of Rule 2110.

* * * * *

IM–2210–4. Limitations on Use of Association's Name

(a) Use of Association Name

Members may indicate membership in the Association in conformity with Article [XVI] *XV*, Section 2 of the NASD By-Laws in one or more of the following ways:

* * * * *

IM–2420–1. Transactions Between Members and Non-Members[1]

(a) Non-members of the Association.

* * * * *

(4) Broker or Dealer Registration Revoked by SEC

Revocation by the Commission of an Association member's registration as a broker or dealer automatically terminates the membership of such broker or dealer in the Association as of the effective date of such order. Under Article [II] *III*, Section 4 of the By-Laws of the Corporation, a firm whose registration as a broker or dealer is revoked is thereby disqualified for membership in the Association, and from the effective date of such order, the membership of such broker or dealer in the Association is discontinued. Thereafter such broker or dealer is a non-member of the Association.

(5) Membership Resigned or Canceled

The membership of a broker or dealer in the Association is automatically terminated when the Association accepts the resignation of such member or cancels its membership in the Association under the provisions of Article [II] *III*, Section 3; Article [III] *IV*, Section 5; or Article [XIV] *XIII*, Section 1, of the By-Laws. After the date of acceptance by the Association of the resignation of such member or the date of cancellation of membership by the Association, such broker or dealer is a non-member of the Association.

* * * * *

IM–2420–2. Continuing Commissions Policy

* * * * *

[1] Text of note unchanged.

[30] 15 U.S.C. 78s(b)(2).

[31] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Under no circumstances shall payment of any kind be made by a member to any person who is not eligible for membership in the Association or eligible to be associated with a member because of any disqualification, as set forth in Article [II] *III* of the Association's By-Laws, such as revocation, expulsion, or suspension still in effect.

* * * * *

IM–2440. Mark-Up Policy [3]

The question of fair mark-ups or spreads is one which has been raised from the earliest days of the Association. No definitive answer can be given and no interpretation can be all-inclusive for the obvious reason that what might be considered fair in one transaction could be unfair in another transaction because of different circumstances. In 1943, the Association's Board adopted what has become known as the ''5% Policy'' to be applied to transactions executed for customers. It was based upon studies demonstrating that the large majority of customer transactions were effected at a mark-up of 5% or less. The Policy has been reviewed by the Board of Governors on numerous occasions and each time the Board has reaffirmed the philosophy expressed in 1943. Pursuant thereto, and in accordance with Article VII, Section 1(a)[(2)]*(ii)* of the By-Laws, the Board has adopted the following interpretation under Rule 2440.

* * * * *

Rule 3010. Supervision

* * * * *

(e) Qualifications Investigated

Each member shall have the responsibility and duty to ascertain by investigation the good character, business repute, qualifications, and experience of any person prior to making such a certification in the application of such person for registration with this Association. Where an applicant for registration has previously been registered with the Association, the member shall obtain from the Firm Access Query System (FAQS) or from the applicant a copy of the Uniform Termination Notice of Securities Industry Registration (Form U–5) filed with the Association by such person's most recent previous NASD member employer, together with any amendments thereto that may have been filed pursuant to Article [IV]*V*, Section 3 of the Association's By-Laws. The member shall obtain the Form U–5 as required by this Rule no later than sixty (60) days following the filing of the application for registration or demonstrate to the Association that it has made reasonable efforts to comply with the requirement. A member receiving a Form U–5 pursuant to this Rule shall review the Form U–5 and any amendments thereto and shall take such action as may be deemed appropriate.

* * * * *

6120. Participation in ACT

(a) Mandatory Participation for Clearing Agency Members

(1) Pursuant to Article VII, Section 1(a)[(6) and (7)]*(vi) and (vii)* of the By-Laws participation in ACT is mandatory for all brokers that are members of a clearing agency registered with the Commission pursuant to Section 17A of the Act, and for all brokers that have a clearing arrangement with such a broker.

* * * * *

10101. Matters Eligible for Submission

This Code of Arbitration Procedure is prescribed and adopted pursuant to Article VII, Section 1(a)[(4)](*iv*) of the By-Laws of the Association for the arbitration of any dispute, claim, or controversy arising out of or in connection with the business of any member of the Association, or arising out of the employment or termination of employment of associated person(s) with any member, with the exception of disputes involving the insurance business of any member which is also an insurance 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, NASD Regulation included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to correct cross-references to the NASD By-Laws in Rules 0112, 0120, 1060, 1100, 3010, 6120, and 10101 and Interpretive Material 2110–4, 2210–4, 2420–1, 2420–2, and 2440. In late 1997, the Commission approved substantial amendments to the NASD's corporate documents that were designed to: (1) implement a corporate restructuring developed in 1997; (2) comply with the SEC's August 8, 1996 Order making certain findings and imposing remedial sanctions,[4] and (3) implement certain recommendations found in the *Report of the NASD Select Committee on Structure and Governance to the NASD Board of Governors*.[5] A number of articles and sections were added or removed from the NASD By-Laws, resulting in the need to renumber the By-Laws. A substantial number of corrections to By-Law cross-references in the NASD Rules were made in the rule filing that substantially amended the NASD's corporate documents. The purpose of the proposed rule change is to completer the corrections of the cross-references to the currently approved By-Laws so that all of the NASD Rules conform to the By-Laws.[6]

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[7] which requires, among other things, that the Association's rules 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

[3] In SR–NASD–97–61, which has been published for comment by the Commission, NASD Regulation proposed to renumber IM–2440 as IM–2440–1. *See* Securities Exchange Act Release No. 40511 (Sept. 30, 1998), 63 FR 54169 (Oct. 8, 1998).

[4] Report and Appendix to Report Pursuant to Section 21(a) of the Securities Exchange Act of 1934 Regarding the NASD and the Nasdaq Stock Market (August 8, 1996) and Securities Exchange Act Release No. 37538 (August 8, 1996) (SEC Order Instituting Public Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, In the Matter of National Association of Securities Dealers, Inc.)

[5] In November 1994, the NASD Board of Governors appointed the Select Committee on Structure and Governance to review the NASD's corporate governance structure and to recommend changes to enable the NASD to meet its regulatory and business obligations.

[6] The Commission recently approved other changes to the NASD By-Laws. *See* Securities Exchange Act Release No. 40615 (Oct. 28, 1998), 63 FR 59614 (Nov. 4, 1998). None of these changes require corrections to the cross-references in the NASD Rules.

[7] 15 U.S.C. 78o–3(b)(6).

proposed rule change simply corrects cross-references to the NASD By-Laws in the NASD Rules and would not result in a substantive change in any rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(i) of the Act,[8] and Rule 19b–4(e)(1)[9] thereunder, in that it is designated by the NASD as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[10]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the foregoing 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 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–98–86 and should be submitted by December 28, 1998.

It is therefore ordered, pursuant to Section 19(b)(2)[11] of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32401 Filed 12–4–98; 8:45 am]

BILLING CODE 8010–01–M

[8] 15 U.S.C. 78s(b)(3)(A)(i).

[9] 17 CFR 240.19b–4(e)(1).

[10] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9A54]

State of Idaho and Contiguous Counties in Montana and Washington

Boundary County and the contiguous counties of Bonner in the State of Idaho, Lincoln County in the State of Montana, and Pend Oreille County in the State of Washington constitute an economic injury disaster loan area as a result of a debris flow and landslide that occurred on October 17. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on August 27, 1999 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795.

The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent. The numbers assigned for economic injury for this disaster are 9A5400 for Idaho; 9A5500 for Montana; and 9A5600 for Washington.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: November 27, 1998.

Aida Alvarez,

Administrator.

[FR Doc. 98–32433 Filed 12–4–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

New England States Regional Fairness Board Strategy Meeting

The Small Business Administration Region I New England States Regional Fairness Board located in the geographical area of Boston Massachusetts, will hold a strategy meeting at 9:30 a.m. on Friday, December 11, 1998 at the SBA Regional Office 10 Causeway Street, (8th Floor), O'Neil Federal Building, Boston, MA 02222–1903, to collect Fairness Board members' comments on the 6/22/98 proceedings, as well as to obtain recommendations and other input for the annual Report to Congress.

For further information, write or call, Gary P. Peele (312) 353–0880.

Shirl Thomas,

Director, Office of External Affairs.

[FR Doc. 98–32432 Filed 12–4–98; 8:45 am]

BILLING CODE 8025–01–P

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Tennessee Valley Authority (Meeting No. 1510).

TIME AND DATE: 9. a.m. (CST), December 9, 1998.

PLACE: Shawnee Fossil Plant Auditorium, Paducah, Kentucky.

STATUS: Open.

Agenda

Approvial of minutes of meetings held on September 23 and October 23, 1998.

New Business

C—Energy

C1. Contract with Asea Brown Boveri Power Transmission and Distribution Company, Inc., for supply of power transformers.

C2. Contracts with Gardner Service Corporation, Brentwood, Tennessee; Raines Brothers, Inc., Schaerer Contracting Company, Inc., and Vega Corporation of Tennessee, Chattanooga, Tennessee; and Turner Construction Company, Nashville, Tennessee, for construction and/or modification services at TVA facilities located in the metropolitan and surrounding areas of Chattanooga and Nashville, Tennessee.

C3. Contract with Ecolochem, Inc., for chemicals, equipment, and related services for bulk, package, lab, herbicide, pesticide, dust suppression, boiler cleaning, and water treatment for all TVA locations.

C4. Contract with Southeastern Construction and Equipment Company,

LLC, for initial clearing, restoration, and reclamation of right-of-way areas to support construction of new transmission lines for the central TVA region.

C5. Contract with Crisp & Crisp, Inc., for initial clearing, restoration, and reclamation of right-of-way areas to support construction of new transmission lines for the eastern TVA region.

C6. Contract with Calgon Corporation for raw water and speciality chemicals and raw water chemical treatment services at TVA nuclear facilities.

C7. Supplements to engineering services contracts with Midpoint International Corporation (TV–95252V) and Martin-Williams International, Inc. (TV–95264V), to provide engineering services in a staff augmentation role to TVA.

C8. Supplement to Contract No. TV–89742V with Gilbert/Commonwealth, Inc.

C9. Contracts with ABB Environmental Systems, Inc., for selective catalytic reduction process equipment for Paradise Fossil Plant Units 1 and 2, and Cormetech, Inc., for furnishing catalyst for Paradise Fossil Plant Units 1 and 2 and long-term catalyst supply.

C10. Contract with ABB Power Generation for generator uprating and related system upgrade for Raccoon Mountain Pumped-Storage Plant.

C11. Contract with General Electric Company for generator field rewinds of the GE combustion turbine generating units.

C12. Contract with General Electric Company for the combustion turbine dual fuel conversion project at Johnsonville Fossil Plant.

C13. Abandonment of surface rights overlying coal and associated right to mine and remove such coal affecting approximately 176.84 acres of Koppers Coal Reserve in Campbell County, Tennessee (Tract No. EKCR–10).

E—Real Property Transactions

E1. Grant of a 25-year public recreation easement affecting 35.3 acres of Chatuge Lake land in Towns County, Georgia (Tract No. XTCHR–29RE).

Information Items

1. Medical contribution plan for certain employees, retirees, and dependents not eligible for the TVA Retirement System supplement benefit, future access to retiree medical coverage, future access to contributions toward retiree health coverage costs for Civil Service and Federal Employees Retirement System retirees.

2. Approval of land exchange by the United States Department of Agriculture, Forest Service, affecting approximately 3.7 acres of former TVA land on Fontana Lake in Swain County, North Carolina (Tract No. XTFR–3).

3. Approval to file a condemnation case affecting the New Albany-Holly Springs Loop to Hickory Flat Transmission Line (Tract No. THSHF–2).

4. Approval to award a fixed-price contract with General Electric Company for the manufacture and turnkey installation of eight combustion turbine generating units for operation beginning June 2000.

5. Approval of land exchange by the United States Department of Agriculture, Forest Service, affecting approximately 2.93 acres of former TVA land on Watauga Lake in Carter County, Tennessee (Tract No. XTWAR–30).

6. Modification of a permanent easement to the Utilities Board, City of Muscle Shoals, affecting 0.9 acre of land on the Muscle Shoals Reservation, Colbert County, Alabama (Tract No. XT2NPT–16E).

7. Rescission of a February 1, 1995, authorization of a grant of permanent easement for highway improvements to the Tennessee Department of Transportation affecting approximately 21 acres of land on Cherokee Lake, Grainger County, Tennessee (Tract No. XTCK–61H), and grant of a permanent easement for highway improvements to the Tennessee Department of Transportation affecting approximately 34 acres of land on Cherokee Lake (Tract No. XTCK–61H).

8. 1999 edition of the Transmission Service Guidelines, providing open access transmission service over the TVA system, and the rates for transmission service and ancillary services included in the Guidelines.

9. Delegation of authority to the Senior Vice President, Procurement, to enter into contractual obligations required for TVA to obtain financial market data.

10. Approval of Fiscal Year 1998 tax-equivalent payments to states and counties and estimated tax-equivalent payments for FY 1999.

11. Approval of the sale of TVA Power Bonds.

12. Approval of the Chief Financial Officer's proposed power system operating budget and power system capital budget for Fiscal Year 1999.

13. Approval for the sale of TVA Power Bonds and delegation of authority to enter into currency swap arrangements with Morgan Guaranty Trust Company.

14. Approval to file a condemnation case affecting the Oneida-McCreary Loop into Winfield Transmission Line.

15. Approval of amendments to resolutions adopted on March 2, 1998 (and amended June 10, 1998), relating to the sale of Tennessee Valley Authority Power Bonds.

16. Approval of changes in accounting policies in conjunction with the Fiscal Year 1999 budget.

17. Approval for an increase in the amount of short-term debt that may be issued through the book-entry system of the Federal Reserve Banks.

FOR MORE INFORMATION: Please call TVA Public Relations at (423) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999.

Dated: December 2, 1998.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 98–32487 Filed 12–3–98; 12:25 pm]

BILLING CODE 8210–08–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1998–4765]

Intent to Prepare a Programmatic Environmental Assessment for the Coast Guard ''Optimize Training Infrastructure'' Initiative; Correction

AGENCY: Coast Guard, DOT.

ACTION: Notice of intent; notice of meetings and request for comments; correction.

SUMMARY: The Coast Guard published a document in the **Federal Register** of November 19, 1998, announcing its intent to prepare a Programmatic Environmental Assessment (PEA) on its ''Optimize Training Infrastructure'' (OTI) Initiative and to begin 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 were scheduled. The time for the meeting in Cape May, New Jersey, and for the public open house before that meeting were incorrect.

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.

Correction

In the **Federal Register** of November 19, 1998, in FR Doc. 98–30991, on page 64309, in the second column, correct the **DATES** caption to read:

DATES: The meeting dates are—

1. December 7, 1998, from 4:30 p.m. until 7 p.m., Cape May, NJ.
2. December 8, 1998, from 6:30 to 9 p.m., Yorktown, VA.
3. December 10, 1998, from 6:30 to 9 p.m., Petaluma, CA.

A public open house will be held before the Cape May meeting from 3 p.m. to 4:30 p.m. and before the Yorktown and Petaluma meetings from 3:30 p.m. to 5:30 p.m.

Written comments must reach the Docket Management Facility on or before December 24, 1998.

Dated: December 1, 1998.

D.E. Clapp,

Capt, USCGR, Director of Reserve and Training Acting.

[FR Doc. 98–32389 Filed 12–4–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[AC No. 20–XX FSCAP]

Proposed Advisory Circular (AC) on Eligibility and Evaluation of U.S. Military Surplus Flight Safety Critical Aircraft Parts (FSCAP), Engines, and Propellers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed FSCAP AC and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed AC pertaining to guidance for use in determining the eligibility of and evaluating U.S. military surplus flight safety critical aircraft parts for installation on U.S. type certificated products. This notice is necessary to give all interested persons the opportunity to present their views on the proposed AC.

DATES: Comments must be received on or before February 5, 1999.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration, Continuous Airworthiness Maintenance Division, AFS–300, 800 Independence Avenue, SW., Washington, DC 20591, attention Al Michaels. Comments may be inspected at the above address between 9:00 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Al Michaels, AFS–300, at the above address, or telephone (202) 267–8203, or facsimile (202) 267–5115.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the proposed AC may be obtained by downloading through the Internet at the following Uniform Resource Location (URL): http://www.faa.gov/avr/afs/acs/fscap.doc. The file name is ''FSCAP.'' doc in word 6 format.

Interested persons are invited to comment on the draft AC by submitting such written data, views, or arguments as they may desire or E:mail Al Michaels at Albert.Michaels@faa.gov. Commenters should identify FSCAP AC, Eligibility and Evaluation of U.S. Military Surplus Flight Safety Critical Aircraft Parts, Engines, and Propellers to the address specified above. All comments will be considered by the Continuous Airworthiness Maintenance Division, AFS–300, before issuing the final AC.

Background

The U.S. Federal Property and Administrative Services Act of 1949, as amended, requires the Department of Defense (DoD) to dispose of its surplus property. However, the DoD is prevented from destroying property with economic value. With the ''downsizing'' of military requirements, increasing quantities of surplus DoD aircraft and their parts have become available for civil purchase. Depending on the aircraft type and/or whether these surplus military products have had civilian counterpart models for which an FAA U.S. type certificate had been issued, such aircraft may have potential eligibility for issuance of either standard or special airworthiness certificates. Concerns regarding military surplus aircraft parts, specifically those parts designated by the proponent military service as Flight Safety Critical Aircraft Parts (FSCAP), entering into the civil market place led to the forming of a joint DoD/FAA FSCAP Process Action Team (PAT). This team, representing the Defense Logistics Agency, the Departments of the Army, Navy and Air Force, and the FAA, produced recommendations related to the identification, disposition and control of military surplus FSCAP. DoD and the FAA accepted the PAT recommendations and jointly signed the implementation plan memorandum in 1995. This proposed FSCAP AC is part of the Flight Safety Critical Aircraft Parts, Process Action Team's (PAT) implementation recommendations and provides guidance that is pertinent to any member of the aviation community concerned with the potential installation of military surplus FSCAP on FAA type-certificated products. While many military parts may be the same as their FAA-approved civil counterparts, they are not generally FAA-approved for installation. Typically, the procuring military service specifies requirements for the design, production, and acquisition of parts that may not meet 14 Code of Federal Regulations (CFR); however, certain parts procured by the DoD have the potential to be approved for civil use. Conversely, certain military unique FSCAP are currently part of FAA-certificated, restricted category military surplus products. Some military unique replacement parts have no alternative source other than the military surplus stocks originally procured solely for armed forces use.

The DoD makes no representation as to a military surplus part's eligibility for installation on FAA type certificated products. Therefore, prior to installing such parts on a certificated product, the installer must make a determination of airworthiness. In order to maintain the airworthiness of any aircraft, parts used to maintain the aircraft must meet that aircraft's applicable airworthiness requirements. Failure to comply with Federal Aviation Regulation requirements can subject the owner and/or installer to enforcement actions. Since military surplus parts may not meet FAA type design, and/or may have been operated outside the limitations specified by the Code of Federal Regulations inspections and/or FAA approvals may be needed to determine the part's condition for safe operation and eligibility for installation on a type-certificated product. This Advisory Circular (AC) would address a means to help the installer make these required determinations.

Issued in Washington, DC, on December 1, 1998.

Richard O. Gordon,

Acting Director, Flight Standards Service.

[FR Doc. 98–32407 Filed 12–4–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Request Renewal From the Office of Management and Budget (OMB) of Current Public Collections of Information

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the FAA invites public comment on 6 currently approved public information collections which will be submitted to OMB for renewal.

DATES: Comments must be received on or before February 5, 1999.

ADDRESSES: Comments on any of these collections may be mailed or delivered to the FAA at the following address: Ms. Judith Street, Room 612, Federal Aviation Administration, Corporate Information Division, APF–100, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Judith Street at the above address or on (202) 267–9895.

SUPPLEMENTARY INFORMATION: The FAA solicits comments on any of the current collections of information in order to evaluate the necessity of the collection, the accuracy of the agency's estimate of the burden, the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of the collection.

Following are short synopses of the 6 currently approved pubic information collection activities, which will be submitted to OMB for review and renewal:

1. *2120–0003, Malfunction or Defect Report.* The information collections are required by CFR 135 and 145. Malfunction or Defect Reports are mandatory submissions on FAA Form 8010–4, by repair stations certificated under Part 145, and Air taxi operators certificated under Part 135. The collection of this information permits the FAA to evaluate its certification standards, maintenance programs, and regulatory requirements since their effectiveness is reflected in the number of equipment failures or the lack thereof. It is also the basis for issuance of Airworthiness Directives designed to prevent unsafe conditions and accidents. The current number of respondents is estimated to be 20,500 part 135,145, and other operators encouraged to submit reports. The estimated burden on the public is estimated to be 6,200 hours annually.

2. *2120–0005, General Operating and Flight Rules—FAR 91.* Part A of Subtitle VII of the Revised Title 49 USC authorizes the issuance of regulations governing the use of navigable airspace. The reporting and recordkeeping requirements of 14 CFR Part 91 prescribes rules governing the operation of aircraft (other than moored balloons, kites, rockets and unmanned free balloons) within the United States. The reporting and recordkeeping requirements prescribed by various sections of Part 91 are necessary for FAA to ensure compliance with these provisions. The respondents are individual airmen, state or local governments and businesses. The estimated burden associated with this collection is 230,000 hours annually.

3. *2120–0042, Aircraft Registration.* Public Law 103–272 states that all aircraft must be registered before they may be flown. The registration system provides identification of all civil aircraft in the United States. The registration record also provides evidence of ownership. The respondents are anyone, individual or businesses, wishing to register an aircraft. The respondent population is estimated to be 73,000 with an estimated annual burden of 74,000 hours.

4. *2120–0514, Aviation Insurance.* The Federal Aviation Administration is authorized to provide aviation insurance in emergency situations in which the President determines that continuation of air service is in the foreign policy interest of the United States and the Administrator has determined that aviation insurance is not available on reasonable terms and conditions from commercial sources. There are an estimated 45 respondents, and an estimated burden of 68 hours.

5. *2120–0517, Airport Noise Compatibility Planning—FAR 150.* The respondents are those airport operators voluntarily submitting noise exposure maps and noise compatibility programs to the FAA for review and approval. FAA approval makes airport operators' noise compatibility programs eligible for a 10 percent set-aside of discretionary grant funds under the FAA Airport Improvement Program. The respondents are an estimated 17 state and local governments (airport operators) for an estimated 55,000 hours.

6. *2120–0570, Certificated Training Centers Simulator Rule—Part 142.* To determine compliance, there is a need for airmen to maintain records of certain training and regency of experience. There is a need for training centers to maintain records of students trained, employee qualification and training, and training program approvals.

Information is used to determine compliance with airmen certification and testing to ensure safety. The respondents are an estimated 42 businesses with an estimated annual burden of 5500 hours.

Issued in Washington, DC, on December 1, 1998.

Steve Hopkins,

Manager, Corporate Information Division, APF–100.

[FR Doc. 98–32408 Filed 12–4–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–98–23]

Petition 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.

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.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 22, 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, D.C. 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, D.C. 20591; telephone (202) 267–2132.

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, D.C., on December 2, 1998.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 27396.
Petitioner: Northwest Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.401(d), 121.433(c)(1)(iii), 121.440(a), and 121.441(a)(1) and (b)(1); appendix F.
Description of Relief Sought/ Disposition: To permit Northwest Airlines (NWA) to combine recurrent flight and ground training and proficiency checks for NWA's flight crewmembers in a single annual training and proficiency evaluation program and meet the line check requirements of 121.440(a) and SFAR No. 58 through and FAA-approved alternative line check program.
Grant: November 3, 1998, Exemption No. 5815C.

Docket No.: 23940.
Petitioner: Eagle Canyon Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.345(c)(2).
Description of Relief Sought/ Disposition: To permit Eagle Canyon Airlines to operate certain aircraft under the provisions of part 121 without a TSO–C112 (Mode S) transponder installed on each of those aircraft.
Grant, November 3, 1998, Exemption No. 6839.

Docket No.: 010NM.
Petitioner: Boeing Commercial Airplane Group.
Sections of the FAR Affected: 14 CFR 121.583(c).
Description of Relief Sought/ Disposition: To permit the initial and recurrent training mandated for flightcrew by operational regulatory requirements (e.g., subpart N of part 121) shall include the use of inertia reels and harnesses, including for the evacuation of incapacitated occupants.
Grant: November 5, 1998, Exemption No. 4808B.

[FR Doc. 98–32409 Filed 12–4–98; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RIN 2120–AF 04

Policy on the Use for Enforcement Purposes of Information Obtained from an Air Carrier Flight Operational Quality Assurance (FOQA) Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: General Statement of Policy.

SUMMARY: This document states the FAA policy concerning the use for enforcement purposes of information obtained from an air carrier voluntary Flight Operational Quality Assurance (FOQA) program, and sets forth what the FAA considers to be a FOQA program for purposes of this policy.

EFFECTIVE DATE: December 7, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas M. Longridge, Air Transportation Division, Flight Standards Service, telephone (703) 661–0260, facsimile (703) 661–0274, email: Thomas.Longridge@faa.fov, mailing address: AFS–230, P.O. Box 20027, Washington, D.C. 20041, or Peter J. Lynch, Enforcement Division, Office of the Chief Counsel, telephone (202) 267–3137, facsimile (202) 267–7257, email: Peter.Lynch@faa.gov, mailing address: AGC–300, 800 Independence Avenue, SW, Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

Background

Since the mid-1940's the civil air transport accident rate has significantly decreased. This decrease is due in part to the air transport industry's practice of discovering, understanding, and eliminating factors that lead to accidents and incidents. For many years, industry, the FAA, and the National Transportation Safety Board (NTSB) have used information from flight data recorders (FDRs) and digital flight data recorders (DFDRs) to identify the causes of accidents and to attempt to eliminate those causes systematically.

Airplanes used in operation as conducted under 14 CFR part 121 and certain types of aircraft used in operations conducted under parts 91, 125, and 125 are required to have flight data recorders. Any operator who has installed approved flight recorders is required to keep the recorded information for at least 60 days after an accident or incident requiring immediate notification to the NTSB (14 §§ CFR 91.609(G), 121.343(I), 125.225(G), AND 135.152(E)). The flight data recorder information can thus be analyzed to determine causes of an accident or incident.

In the past 20 years, technological advances in digital flight data recording and on-board storage media have increased the potential for obtaining and analyzing information on the flight characteristics of an aircraft during its operation. This information can be analyzed on a routine basis in order to identify trends which, if uncorrected, could lead to an unsafe situation. The key potential safety benefit of this strategy is that it would enable the FAA and aircraft operators to take early action to prevent accidents. This benefit would be in addition to current sources of safety information on which the agency and industry rely for after-the-fact accident- or incident-driven data extraction and analysis which may then be used to develop safety fixes to prevent later accidents, and information from operator self-disclosure programs. Because of its capacity to provide early objective identification of safety shortcoming, the routine analysis of digital flight data offers significant additional potential for accident avoidance.

In January 1995 the Department of Transportation sponsored an Aviation Safety Conference in cooperation with key representatives from industry and government. A major concern of the conference was a projection that even if the currently low accident rate remains constant, the number of accidents per year could nevertheless continue to increase due simply to the increase in traffic volume expected in the future. The conference focused therefore on the development of additional measures that the FAA and industry might pursue in the interest of precluding this possibility. It was observed that while enforcement will remain a useful tool for the protection of public safety, enforcement alone is unlikely to achieve the further reductions in the accident rate that are needed. Industry must play an active role in better identifying potential threats to safety and in self-initiating the necessary corrective actions before they lead to accidents. Among the recommendations from the conference, the voluntary implementation of FOQA programs was identified as one of the most promising industry initiatives with realistic potential to reduce accidents.

Conference participants further recommended that the FAA sponsor a FOQA Demonstration Study in cooperation with industry in order to permit both government and industry to develop hands-on experience with FOQA technology in a U.S. environment, document the cost-

benefits of voluntary implementation, and initiate the development of organizational strategies for FOQA information management and use. In the interest of encouraging participation in such a study, and in response to industry expressions of concern over the enforcement ramifications of participating in it, the FAA committed itself at the conference to issuing an interim policy statement concerning the use of FOQA information by the FAA.

In February 1995, the FAA Administrator issued a statement of policy on the use of FOQA information for enforcement purposes. In letters to the President of the Air Line Pilots Association (ALPA) and the President of the Air Transport Association (ATA), the Administrator committed to limitations on the use of FOQA information for enforcement purposes. The letters also stated that, ''The FAA will use information from the demonstration study as well as experience gained as a basis for determining appropriate future action regarding the need for and appropriateness of rulemaking to codify the limitations on the FAA's use of FOQA information.''

The FOQA Demonstration Study has been conducted over the past 3 years in cooperation with major airlines in the U.S. Analysis of the flight data information, which is deidentified at the time of collection, has provided substantial documentation of the benefits of FOQA. The Demonstration Study's findings are very similar to the results obtained by foreign air carriers, many of whom have long experience in the use of this technology. These include documenting unusual autopilot disconnects, GPWS warnings, excessive rotation rates on take-off, unstabilized approaches, hard landings, and compliance with standard operating procedures. They also include use of FOQA data for monitoring fuel efficiency, identifying out-of-trim airframe configurations, enhanced engine condition monitoring, noise abatement compliance, rough runway surfaces and aircraft structural fatigue. These results clearly validate the value of FOQA for safety enhancement.

Based on the results of the Demonstration Study, the FAA has concluded that FOQA can provide a source of objective information on which to identify needed improvements in flight crew performance, air carrier training programs, operating procedures, air traffic control procedures, airport maintenance and design, and aircraft operations and design. The acquisition and use of such information to achieve improvements in these areas clearly enhances safety. The FAA therefore finds that encouraging the voluntary implementation of FOQA programs by U.S. operators is in the public interest.

Policy Statement

The FAA encourages voluntary airline collection of deidentified digital flight data recorder data to monitor line operations on a routine basis, along with the establishment of procedures for taking corrective action that analysis of such data indicates is necessary in the interest of safety. The FAA also recognizes the industry's concerns regarding the use of deidentified FOQA information to undertake enforcement actions. The FAA therefore has determined that the appropriate policy is to refrain from using deidentified FOQA information to undertake enforcement actions except in egregious cases, i.e., those that do not meet the conditions listed in section 9, paragraph c of Advisory Circular 00–46D governing the Aviation Safety Reporting Program. This policy applies only to information collected specifically in a FOQA program that is FAA-approved.

For purposes of this policy, the term ''FOQA program'' means an FAA-approved program for the routine collection and analysis of in-flight operational data by means of a DFDR. The program would include a description of the operator's plan for collecting and analyzing the data, procedures for taking corrective action that analysis of the data indicates is necessary in the interest of safety, procedures for providing the FAA access at the carrier's offices to deidentified aggregate FOQA information, and procedures for informing the FAA as to any corrective action being undertaken. The FAA will be able to monitor safety trends evident in the FOQA data and the operator's effectiveness in correcting adverse safety trends.

Issued in Washington, DC on December 2, 1998.

Jane F. Garvey,

Administrator.

[FR Doc. 98–32483 Filed 12–3–98; 11:27 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Preemption Determination No. PD–14(R) (Docket No. PDA–15(R))

Houston, Texas, Fire Code Requirements on the Storage, Transportation, and Handling of Hazardous Materials

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of administrative determination of preemption by RSPA's Associate Administrator for Hazardous Materials Safety.

APPLICANT: Association of Waste Hazardous Materials Transporters (AWHMT).

LOCAL LAWS AFFECTED: Houston, Texas, Ordinance No. 96–1249 adopting the 1994 Uniform Fire Code with certain modifications.

APPLICABLE FEDERAL REQUIREMENTS: Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, and the Hazardous Materials Regulations (HMR), 40 CFR Parts 171–180.

MODES AFFECTED: Highway.

SUMMARY: The Houston Fire Code contains express exceptions for flammable and combustible liquids and other hazardous materials when being transported ''in accordance with'' DOT's regulations. For that reason, the following requirements in the Houston Fire Code do not apply, and are not preempted by Federal hazardous material transportation law, when the transportation of flammable and combustible liquids is subject to the requirements in the HMR: (1) permits for the storage, handling, transportation, dispensing, mixing, blending or using hazardous materials, including the definition of ''hazardous materials'' as part of these permit requirements; (2) the design, construction, or operation of tank vehicles used for flammable or combustible liquids; (3) physical bonding during loading of the vehicle; (4) unattended parking of the vehicle; and (5) the service rating of the fire extinguisher required to be carried on the vehicle.

RSPA denies the request in AWHMT's May 1997 comments to consider a provision limiting the time for unloading flammable or combustible liquids from rail tank cars after delivery, because that requirement is unrelated to the issues raised in AWHMT's application.

FOR FURTHER INFORMATION CONTACT:

Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001, telephone 202–366–4400.

SUPPLEMENTARY INFORMATION:

I. Background

A. Application and Public Notices

In February 1996, AWHMT applied for an administrative determination that Federal hazardous material transportation law preempts certain provisions of the Fire Code of the City of Houston, Texas, as adopted March 15, 1995, in Ordinance No. 95–279. At that time, the Houston Fire Code consisted of the Uniform Fire Code (1991 edition) as modified in a ''Conversion Document.''

In its application, AWHMT stated that the challenged provisions were being applied to tank vehicles that picked up or delivered hazardous materials within the City of Houston (City) and involved: (1) inspections and fees required to obtain an annual permit to store, handle, transport, dispense or use hazardous materials (including flammable and combustible liquids) in excess of specified amounts; (2) the definition of ''hazardous materials''; and (3) additional requirements applicable to tank vehicles used for flammable and combustible liquids. AWHMT separately provided copies of citations issued to operators of cargo tank motor vehicles for loading or unloading corrosive materials within the City without the permit required by the Houston Fire Code.

The test of AWHMT's application was published in the **Federal Register** on March 20, 1996, and interested parties were invited to submit comments. 61 FR 11463. Comments were submitted by the Hazardous Materials Advisory Council (HMAC), the National Tank Truck Carriers, Inc. (NTTC), the Texas Tank Truck Carriers Association, Inc. (TTTC), and the City. Rebuttal comments were submitted by AWHMT. In its comments, the City stated that the Houston Fire Department would be submitting the 1994 edition of the Uniform Fire Code to the Houston City Council for adoption. According to the City, the revised version of the Houston Fire Code would (1) make clear that the permit requirements did not apply to over-the-road (or ''off-site'') transportation of hazardous materials, and (2) modify some of the requirements applicable to tank vehicles used for flammable or combustible liquids.

In February 1997, the City provided a certified copy of Ordinance No. 96–1249, approved by the Houston City Council on November 26, 1996, which (among other matters) amended Ordinance No. 95–279 to adopt the 1994 edition of the Uniform Fire Code together with certain ''City of Houston Amendments.'' Thereafter, RSPA published a notice in the **Federal Register** reopening the comment period on AWHMT's application so that interested parties could provide further information on the current status of the challenged provisions in the Houston Fire Code, and how those provisions are being applied or enforced in light of the exceptions in the Houston Fire Code for ''[t]ransportation of flammable and combustible liquids when in accordance with DOT regulations,'' and ''[o]ff-site hazardous materials transportation in accordance with DOT requirements.'' 62 FR 17281, 17282 (April 9, 1997).

In the April 1997 notice, RSPA also invited interested parties to comment on whether AWHMT's application raised issues concerning the applicability of the HMR that should be considered (in addition to or instead of action on AWHMT's application) in the rulemaking under Docket No. HM–223, ''Applicability of the Hazardous Materials Regulations to Loading, Unloading and Storage.'' *See* RSPA's Advance Notice of Proposed Rulemaking, 61 FR 39522 (July 29, 1996), and Notices of Meeting, 61 FR 49723 (Sept. 23, 1996) and 61 FR 53483 (Oct. 11, 1996). Further comments were submitted by the City, AWHMT, and TTTC. The City and AWHMT also submitted rebuttal comments.

Althought the City has asked RSPA to postpone consideration of AWHMT's application pending issuance of a final rule in HN–223, there is no reason for deferral. The circumstances here are not comparable to those in PDs 8(R)–11(R), California and Los Angeles County Requirements Applicable to On-site Handling and Transportation of Hazardous Materials, 60 FR 8774 (Feb. 15, 1995), where RSPA is deferring consideration of petitions for reconsideration. Those proceedings, which involve requirements in the Uniform Fire Code (as adopted by Los Angeles County), raise issues of the applicability of the HMR as applied to the ''on-site'' handling and transportation of hazardous materials. In contrast, no party here disputes that the HMR apply to carriers who pick up or deliver hazardous materials within the City for ''off-site'' transportation. The main issue in this case is whether the Houston Fire Code applies to those carriers and their vehicles—not whether the HMR apply.

AWHMT, the City, and other parties who submitted comments in this proceeding are encouraged to participate fully in HM–223 because of the relationship between the applicability of the HMR and the Uniform Fire Code to transportation-related activities involving hazardous materials.

B. The Challenged Houston Fire Code Requirements

At its outset, the 1994 Uniform Fire Code adopted in the City's Ordinance No. 96–1249 states that it:

> prescribes regulations consistent with nationally recognized good practice for the safeguarding to a reasonable degree of life and property from the hazards of fire and explosion arising from the storage, handling and use of hazardous substances, materials and devices, and from conditions hazardous to life and property in the use or occupancy of buildings and premises.

Sec. 101.2 (''Scope''). The Uniform Fire Code includes ''general provisions for safety'' (*e.g.*, access and water supply, fire protection equipment, emergency exists), as well as more specific requirements on ''special occupancy uses'' (*e.g.*, places of assembly and shopping malls, temporary structures, dry cleaners and lumber yards), ''special processes'' (*e.g.*, welding, organic coatings), and ''special equipment'' (*e.g.*, oil-burning equipment, drying ovens, refrigeration). A separate part of the Uniform Fire Code covers ''special subjects,'' including flammable and combustible liquids (in Article 79) and hazardous materials (in Article 80).

Within both Articles 79 and 80 (as well as Article 1) are requirements for permits, and Article 79 contains additional provisions concerning ''tank vehicles and vehicle operations'' relating to flammable and combustible liquids. Because the categories of ''hazardous materials'' include flammable and combustible liquids, *both* Articles 79 and 80 appear to apply to flammable and combustible liquids. These articles of the Uniform Fire Code also contain several exceptions, including the following in Sec. 7901.1.1:

> Transportation of flammable and combustible liquids when in accordance with DOT regulations on file with and approved by DOT.

And in Sec. 8001.1.1:

> Off-site hazardous materials transportation in accordance with DOT requirements.

To the above-quoted language in Sec. 8001.1.1, the City has added that the exception also applies to ''other activities for which local regulation is preempted by federal or state law.'' In the following sections containing the

permit requirements challenged by AWHMT, the City of Houston Amendments also state that, ''A permit is not required for any activity where the requirement of local permits is preempted by federal or state law'': Secs. 105.8.f.3, 108.5.h.1, 7901.3.1, 8001.3.1.

The provisions in the Houston Fire Code covered by AWHMT's application relate to the following:

Permits. A permit is required to:

''Store, handle, transport, dispense, mix, blend or use flammable or combustible liquids'' in excess of certain quantities (Sec. 7901.3.1) and to ''. . . operate tank vehicles . . . and similar facilities where flammable and combustible liquids are producted, processed, transported, stored, dispensed or used'' (Sec. 105.8.f.3.3).

''Store, transport on site, dispense, use or handle hazardous materials'' in excess of certain specified amounts (Sec. 105.8.h.1; *see also* Sec. 8001.3.1 [''store, dispense, use or handle hazardous material'']).

Before a permit is issued, the fire chief ''is authorized, but not required, to inspect and approve the receptacles, vehicles, buildings, devices, premises, storage spaces or areas to be used.'' Sec. 105.4. The City charges a $175 fee ''for the permits and inspections'' applicable to flammable and combustible liquids and other hazardous materials, and additional fees for an inspection performed ''outside of regular hours.'' Secs. 106.1, 106.3.3, Table 106–A.

''*Hazardous materials*''. The classification and categories of ''hazardous materials,'' as regulated by the Houston Fire Code, are set forth in Appendix VI–A, which states that these categories are based on the regulations of the Department of Labor's Occupational Safety and Health Administration (OSHA) in Title 29 of the CFR. *See also* Secs. 209 and 8001.1.2. The only relevance of the term ''hazardous materials'' to this proceeding appears to be its use in the permit requirement in Secs. 105.8h.1 and 8001.3.1.

Tank Vehicles. Among the requirements in Article 79 specifically applicable to tank vehicles used for flammable or combustible liquids are the following:

Sec. 7904.6.1. Tank vehicles shall be designed in accordance with U.F.C. Standard 79.4 and Section 7904.6.

Sec. 7904.6.3.4. Bonding shall be in accordance with Section 7904.5.2.3 [which requires a metallic bond between the truck and the fill stem or some part of the rack in electrical contact with the fill stem, in order ''to prevent the accumulation of static charges during truck-filling operations * * * through open domes * * *''].

Sec. 7904.6.5.2.1. Tank vehicles shall not be left unattended at any time on residential streets, or within 500 feet (152.4 m) of a residential area, apartment, or hotel complex, educational facility, hospital or care facility. Tank vehicles shall not be left unattended at any other place that would, in the opinion of the chief, present an extreme life hazard.

Sec. 7904.6.7. Tank vehicles shall be equipped with a fire extinguisher having a minimum rating of 2–A, 20–B:C. During unloading of the tank vehicle, the fire extinguisher shall be out of the carrying device on the vehicle and shall be 15 feet (4572 mm) or more from the unloading valves.

In adopting the 1994 edition of the Uniform Fire Code, the City reduced the number of fire extinguishers required on tank vehicles from two (in former Sec. 79.1207) to one; it also eliminated a provision challenged by AWHMT, requiring ''NO SMOKING'' and ''FLAMMABLE'' signs and other identification on tank vehicles (former Sec. 79.1203(n)).

In its May 23, 1997 comments, AWHMT asked RSPA to consider an additional requirement that rail tank cars containing flammable or combustible liquids ''shall be unloaded as soon as possible after arrival at point of delivery'' and within 24 hours of being connected for transfer operations, unless otherwise approved by the fire chief. Sec. 7904.5.4.3. AWHMT noted that the same tank car unloading requirement in the Uniform Fire Code, as adopted by Los Angeles County, was found to be preempted in PD–9(R), Los Angeles County Requirements Applicable to the Transportation and Handling of Hazardous Materials on Private Property, 60 FR 8774, 8783, 8788 (Feb. 15, 1995). Petitions for reconsideration of that decision and the other determinations made in PDs 8(R)–11(R) are being deferred pending RSPA's consideration of the scope of the HMR in HM–223.

Unlike the challenge to the Los Angeles County requirements, however, neither AWHMT nor any other party has submitted any information as to how Sec. 7904.5.4.3 is being applied or whether there are practical problems in complying with the 24-hour unloading requirement. AWHMT itself acknowledged that the tank car unloading requirement in Sec. 7904.5.4.3 applies to the recipient or consignee of a shipment of hazardous materials in a tank car and, in this respect, differs from the other ''requirements imposed on carriers and equipment under the care, control and custody of carriers'' involved in AWHMT's application.[1]

RSPA believes that the City and other parties who submitted comments understood, as RSPA did, that AWHMT's application challenged requirements in the Houston Fire Code only as applied to motor carriers that pick up or deliver hazardous materials within the City. Indeed, NTTC objected to ''the City's permit system [because] it involves only cargo tank vehicles.'' In the absence of additional information, RSPA cannot add to its prior discussion in PDs 8(R)–11(R) on this requirement, and RSPA is denying AWHMT's belated request to consider the 24-hour tank car unloading requirement because that requirement is unrelated to the issues raised in AWHMT's application.

C. The HMR and Federal Preemption

Federal hazardous material transportation law and the MHR apply to the transportation of hazardous materials in commerce. ''Transportation'' is defined as ''the movement of property and loading, unloading, or storage incidental to the movement.'' 49 U.S.C. 5102(12). With respect to motor carriers, ground transportation is ''in commerce'' when it takes place ''on, across, or along a public road,'' and the HMR ''apply to the ground transportation of hazardous material on, across, or along a public road, including loading, unloading and storage incidental to that transportation.'' PDs 8(R)–11(R), 60 FR at 8777.[2] In the terminology used in PDs 8 (R)–11(R), the HMR unquestionably apply to ''off-site'' transportation; the issues that RSPA hopes to resolve in HM–223 concern the scope of ''transportation'' and the ''on-site'' activities to which the HMR apply.

The HMR do not contain requirements for permits, and regulations have not yet been issued by DOT to implement the provisions of 49 U.S.C. 5109 regarding Federal motor carrier safety permits. In Part 173 of 49 CFR, the HMR contain specific rules for classifying hazardous materials (in some cases differently than OSHA), and, at 49 CFR 172.101, there is a lengthy table listing the materials designated as hazardous for the purpose of transportation.

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[1] The City also points out that the current tank car unloading requirement (in the 1994 Uniform Fire Code) is unchanged from the requirement in Section 79.809(c) of the 1991 Uniform Fire Code and could have been raised in AWHMT's application.

[2] As of October 1, 1998, the HMR apply to all transportation of hazardous materials by motor vehicle. 49 CFR 171.1(a)(1). Previously, intrastate motor carriers of hazardous materials other than hazardous wastes, hazardous substances, marine pollutants, and flammable cryogenic liquids in portable tanks and cargo tanks were regulated only by similar requirements in State or local law (and Texas has adopted the HMR as State law). *Id*.

The HMR include specifications for the construction of cargo tank motor vehicles used to transport flammable liquids, *see* 49 CFR 178.345–178.348, but authorize the use of nonspecification cargo tank motor vehicles for the domestic highway transportation of combustible liquids. 49 CFR 173.150(f). The HMR contain specific requirements for physical bonding during the transfer of hazardous materials to or from a cargo tank. 49 CFR 177.837(c). The HMR incorporate by reference requirements in the Federal Motor Carrier Safety Regulations concerning unattended parking of a motor vehicle containing hazardous materials, 49 CFR 397.5(c), and fire extinguishers on a power unit used to transport hazardous materials. 49 CFR 393.95(a)(2)(i).[3]

Strong Federal preemption is a central feature of Federal hazardous material transportation law, contained in 49 U.S.C. 5101 *et seq.* (Which codified and replaced the former Hazardous Materials Transportation Act (HMTA), Pub. L. 93–633, 88 Stat. 2156, amended by Pub. L. 101–615, 104 Stat. 3244). In considering the HMTA, the Senate Commerce Committee ''endorse[d] the principle of preemption in order to preclude a multiplicity of State and local regulations and the potential for varying and conflicting regulations in the area of hazardous materials transportation.'' S. Rep. No. 1102, 93rd Cong. 2nd Sess. 37 (1974). When it amended the HMTA in 1990, Congress specifically found that:

(3) many States and localities have enacted laws and regulations which vary from Federal laws and regulations pertaining to the transportation of hazardous materials, thereby creating the potential for unreasonable hazards in other jurisdictions and confounding shippers and carriers which attempt to comply with multiple and conflicting registration, permitting, routing, notification, and other regulatory requirements,

(4) because of the potential risks to life, property, and the environment posed by unintentional releases of hazardous materials, consistency in laws and regulations governing the transportation of hazardous materials is necessary and desirable,

(5) in order to achieve greater uniformity and to promote the public health, welfare, and safety at all levels, Federal standards for regulating the transportation of hazardous materials in intrastate, interstate, and foreign commerce are necessary and desirable.

Pub. L. 101–615 § 2, 104 Stat. 3244. A Federal Court of Appeals has found that uniformity was the ''linchpin'' in the design of the HMTA, including the 1990 amendments which expanded the preemption provisions. *Colorado Pub. Util. Comm'n* v. *Harmon,* 951 F.2d 1571, 1575 (10th Cir. 1991).

Section 5125 of Title 49 U.S.C. contains several preemption provisions that are relevant to AWHMT's application. Subsection (a) provides that—in the absence of a waiver of preemption by DOT under § 5125(e) or specific authority in another Federal law—a requirement of a State, political subdivision of a State, or Indian tribe is preempted if:

(1) complying with a requirement of the State, political subdivision or tribe and a requirement of this chapter or a regulation issued under this chapter is not possible; or

(2) the requirement of the State, political subdivision, or Indian tribe, as applied or enforced, is an obstacle to the accomplishing and carrying out this chapter or a regulation prescribed under this chapter.

These two paragraphs set forth the ''dual compliance'' and ''obstacle'' criteria which RSPA had applied in issuing inconsistency rulings prior to 1990, under the original preemption provision in the HMTA. The dual compliance and obstacle criteria are based on U.S. Supreme Court decisions on preemption. *Hines* v. *Davidowitz,* 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc.* v. *Paul,* 373 U.S. 132 (1963); *Ray* v. *Atlantic Richfield, Inc.,* 435 U.S. 151 (1978).

Subsection (b)(1) of 49 U.S.C. 5125 provides that a non-Federal requirement about any of the following subjects, that is not ''substantively the same as'' a provision of Federal hazardous material transportation law or a regulation prescribed under that law, is preempted unless it is authorized by another Federal law or DOT grants a waiver of preemption:

(A) the designation, description, and classification of hazardous material.

(B) the packing, repacking, handling, labeling, marking, and placarding of hazardous material.

(C) the preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents.

(D) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material.

(E) the design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or a container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

Subsection (g)(1) provides that a State, political subdivision, or Indian tribe may

impose a fee related to transporting hazardous material only if the fee is fair and used for a purpose relating to transporting hazardous material, including enforcement and planning, developing, and maintaining a capability for emergency response.

Under 49 U.S.C. 5125(d)(1), any directly affected person may apply to the Secretary of Transportation for a determination whether a State, political subdivision or Indian tribe requirement is preempted. The Secretary of Transportation has delegated to RSPA the authority to make determinations of preemption, except for those concerning highway routing which have been delegated to FHWA. 49 CFR 1.53(b). Under RSPA's regulations, preemption determinations are issued by RSPA's Associate Administrator for Hazardous Materials Safety. 49 CFR 107.209(a).

Section 5125(d)(1) requires that notice of an application for a preemption determination must be published in the **Federal Register.** Following the receipt and consideration of written comments, RSPA publishes its determination in the **Federal Register.** *See* 49 CFR 107.209(d). A short period of time is allowed for filing petitions for reconsideration. 49 CFR 107.211. Any party to the proceeding may seek judicial review in a Federal district court. 49 U.S.C. 5125(f).

Preemption determinations do not address issues of preemption arising under the Commerce Clause of the Constitution or under statutes other than the Federal hazardous material transportation law unless it is necessary to do so in order to determine whether a requirement is authorized by another Federal law. A State, local or Indian tribe requirement is not authorized by another Federal law merely because it is not preempted by another Federal statute. *Colorado Pub. Util. Comm'n* v. *Harmon,* above, 951 F.2d at 1581 n.10.

In making preemption determinations under 49 U.S.C. 5125(d), RSPA is guided by the principles and policy set forth in Executive Order No. 12612, entitled ''Federalism'' (52 FR 41685, Oct. 30, 1987). Section 4(a) of the Executive Order authorizes preemption of State laws only when a statute contains an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, or the exercise of State authority directly conflicts with the exercise of Federal authority. Section 5125 contains express preemption provisions, which RSPA has implemented through its regulations.

[3] As provided in 49 CFR 177.804, motor carriers of hazardous materials ''and other persons subject to this subpart shall comply with 49 CFR parts 390 through 397 (excluding §§ 397.3 and 397.9) to the extent those regulations apply.''

II. Discussion

The focus of the comments in this proceeding has been the provisions in the Houston Fire Code for a permit—including the related inspection and fee requirements—and their application to ''off-site'' transportation. RSPA has repeatedly found that a State or local permit requirement is not *per se* preempted; rather, ''a permit itself is inextricably tied to what is required in order to get it.'' IR–2, 44 FR at 75570–71; *see also* IR–3, Boston Rules Governing Transportation of Certain Hazardous Materials by Highway Within the City, 46 FR 18918, 18923 (Mar. 23, 1981), action on appeal, 47 FR 18457 (Apr. 29, 1982); IR–20, Triborough Bridge and Tunnel Authority Regulations Governing Transportation or Radioactive Materials and Explosives, 52 FR 24396, 24397 (June 30, 1987); and IR–28, City of San Jose, California, Restrictions on Storage of Hazardous Materials, 55 FR 8884, 8890 (Mar. 8, 1990), appeal dismissed as moot, 57 FR 41165 (Sept. 9, 1992).

According to the initial comments submitted by the City and TTTC, until the effective date of Ordinance No. 95–279, Houston had a simple, straightforward exception: the City did not apply its fire code requirements for permits or inspections to any tank truck that was operated within the City for less than 30 days. Beginning in January 1996, however, TTTC noticed a significant increase in citations issued to tank vehicles for failing to have the hazardous materials permit required by Section 4.108 of the Houston Fire Code. According to TTTC, the City was applying the Fire Code adopted in Ordinance No. 95–279 to require a permit for every tank vehicle operating within the City that was ''not on the hazardous material route or one of the main arteries traveling through the Houston area, such as Highway 59.''

Although the exception for ''off-site hazardous materials transportation in accordance with DOT requirements'' was contained in former Sec. 80.101(a) of the 1991 edition of the Uniform Fire Code, TTTC states that the City was interpreting the term ''off-site'' as applying only to the designated hazardous materials routes and main arteries through the City. Because the pick-up or delivery of any material presumably takes place at a location off the designated hazardous materials routes and main arteries, this interpretation of ''off-site'' meant that the City was applying its Fire Code requirements to any vehicle that picked up or delivered hazardous materials within the City—or stopped at a point off the designated hazardous materials routes and main arteries for rest, fuel, food, or other purposes. TTTC states that the term ''off-site'' should apply to ''vehicles making deliveries over-the-road'' and that these off-site movements should be completely exempt from the permit and inspection requirements under the Houston Fire Code adopted in Ordinance 96–1249. TTTC contends that the Houston Fire Code should apply only to ''on-site'' transportation, or when ''a vehicle is used *exclusively* on the *premises* of a facility'' (emphasis in original).

TTTC states that, following AWHMT's application, the City appears to have stopped applying its permit and inspection requirements to tank vehicles that simply picked up or delivered hazardous materials within the City. AWHMT states that it has no evidence ''that the City is continuing to enforce its permit and other hazardous materials requirements on motor carriers,'' although it believes that the withholding of enforcement may be ''contingent on the outcome of this proceeding.''

In the conclusion of its initial comments, the City stated that the ''express exceptions for DOT-regulated activities'' in Secs. 7901.1.1 and 8001.1.1 mean that ''the Fire Code should not be read as applicable to over-the-road (off-site) transportation * * *'' The City elaborated that ''permits will not be required for DOT-regulated activities''; the ''hazardous materials classifications [in the Houston Fire Code] * * * are not applicable to activities regulated by the DOT''; and that provisions in the Fire Code setting design and construction requirements for tank vehicles apply only to ''off-road (or on-site) transportation of flammable or combustible liquids not regulated by DOT.''

In its more recent comments, the City now confirms that it does not require permits, apply its definition of ''hazardous materials,'' or apply its tank design requirements to vehicles ''meeting DOT requirements.'' (The City also states that its ''30-calendar-day requirement is no longer in effect.'') This clearly appears to be the proper interpretation of the exceptions in Secs. 7901.1.1 and 8001.1.1, which apply to the entire contents of Articles 79 and 80—not just the permit requirements.

Although the City states that the provisions in Article 79 concerning physical bonding, unattended parking, and fire extinguishers ''are not affected by the [e]xceptions'' in Secs. 7901.1.1 and 8001.1.1, that conclusion is in direct conflict with the plain language of these exceptions. It is not possible to read these exceptions as applying to some, but not all, of the Houston Fire Code requirements on flammable and combustible liquids (Article 79) and hazardous materials (Article 80). If, because of these exceptions, the permit and inspection requirements in these articles do not apply to a cargo tank motor vehicle that is subject to regulation under the HMR, all the other requirements in these articles (including those on physical bonding, unattended parking, and fire extinguishers) also cannot apply. In the absence of more detailed comments on these other requirements—and specific information that the City is actually enforcing these requirements against carriers that the City does not require to obtain permits or undergo inspections—RSPA must assume that the City applies the exceptions in Secs. 7901.1.1 and 8001.1.1 in a consistent manner.[4]

Because the City now correctly equates the exceptions in the Houston Fire Code for vehicles ''meeting DOT requirements'' with ''subject to regulation by DOT'' under the HMR, AWHMT's challenges to these requirements have become moot. Federal hazardous material transportation law does not preempt non-Federal requirements that do not apply to ''transportation in commerce.'' RSPA agrees with the City's statements that, when it applies the Houston Fire Code to ''motor vehicles that are transporting hazardous materials exclusively on private property,'' its local provisions are not preempted because ''transportation that takes place entirely on private property is not transportation ''in commerce'' '' Quoting from PD–9(R), 60 FR at 8785; *see also* PD–10(R), 60 FR at 8792.[5]

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[4] As a general matter, an inconsistent or erroneous interpretation of a non-Federal regulation should be addressed in the appropriate State or local forum, because ''isolated instances of improper enforcement (e.g., misinterpretation of regulations) do not render such provisions inconsistent'' with Federal hazardous material transportation law. IR–31, Louisiana Statutes and Regulations on Hazardous Materials Transportation, 55 FR 25572, 25584 (June 21, 1990), appeal dismissed as moot, 57 FR 41165 (Sept. 9, 1992), quoted in PD–4 (R), California Requirements Applicable to Cargo Tanks Transporting Flammable and Combustible Liquids, 58 FR 48940 (Sept. 20, 1993), decision on reconsideration, 60 FR 8800 (Feb. 15, 1995).

[5] Certain activities that take place on private property, including the ''loading, unloading, or storage [of hazardous material] incidental to the movement'' of that material in commerce, fall within the scope of ''transportation'' in commerce 49 U.S.C. 5102(12), and are subject to regulation under the HMR. *See* PD–9(R), 60 FR at 8788, 8789 (a 24-hour limit for unloading a tank car is preempted because it is not substantively the same as Federal requirements, and a prohibition against unloading hazardous materials in accordance with a DOT exemption creates an obstacle to

III. Ruling

Because the following Houston Fire Code sections do not apply when the transportation of flammable and combustible liquids is subject to regulation under the HMR, these requirements are not preempted by Federal hazardous material transportation law:

105.4, 105.8.f.3, 105.h.1, 106.1, 7901.3.1, and 8001.3.1., concerning permits and inspections;

209 and 8001.1.2, concerning the definition of ''hazardous materials'' (as relevant to the permit requirements in Secs. 105.8.f.3 and 8001.3.1);

7904.6.1, concerning requirements for the design and construction of tank vehicles;

Sec. 7904.6.3.4, concerning physical bonding during truck-filling operations to prevent the accumulation of static charges;

Sec. 7904.6.5.2.1, prohibiting unattended parking of tank vehicles used for flammable or combustible liquids at specific locations or ''at any other place that would, in the opinion of the chief, present an extreme life hazard''; and

Sec. 7904.6.7, requiring a fire extinguisher with a minimum rating of 2–A, 20–B:C on board a tank vehicle used for flammable or combustible liquids.

IV. Petition for Reconsideration/ Judicial Review

In accordance with 49 CFR 107.211(a), ''[a]ny person aggrieved'' by this decision may file a petition for reconsideration within 20 days of publication of this decision in the **Federal Register.** Any party to this proceeding may seek review of RSPA's decision ''in an appropriate district court of the United States . . . not later than 60 days after the decision becomes final.'' 49 U.S.C. 5125(f).

This decision will become RSPA's final decision 20 days after publication in the **Federal Register** if no petition for reconsideration is filed within that time. The filing of a petition for reconsideration is not a prerequisite to seeking judicial review of this decision under 49 U.S.C. 5125(f).

If a petition for reconsideration of this decision is filed within 20 days of publication in the **Federal Register,** the action by RSPA's Associate Administrator for Hazardous Materials Safety on the petition for reconsideration will be RSPA's final decision. 40 CFR 107.211(d).

Issued in Washington, DC, on November 30, 1998.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 98–32382 Filed 12–4–98; 8:45 am]

BILLING CODE 4910–60–P

accomplishing and carry out the HMR). The City is free to adopt the HMR's requirements as local regulations and apply those consistent requirements to the ''off-site'' transportation of hazardous materials, including flammable and combustible liquids.

DEPARTMENT OF THE TREASURY

Customs Service

Extension of National Customs Automation Program Test Regarding Remote Location Filing

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This notice announces Customs second extension of the second prototype of Remote Location Filing (RLF). This notice also invites public comments concerning any aspect of the current test, informs interested members of the public of the eligibility requirements for voluntary participation, describes the basis for selecting participants, and establishes the process for developing evaluation criteria. To participate in the prototype test, the necessary information, as outlined in this notice, must be filed with Customs and approval granted. It is important to note that resources expended by the trade and Customs on these prototypes may not carry forward to the final program.

Based on our experience in the extension of the second prototype of RLF, we have made modifications to the sections detailing Eligibility Criteria, Prototype Two Applications, and Misconduct. The changes to the Prototype Two Applications will affect parties who wish to apply for participation in the extension of the second prototype of RLF. Current participants may continue their participation without reapplying.

EFFECTIVE DATE: The extension of the second prototype will commence no earlier than January 1, 1999, will continue, and be concluded, no earlier than December 31, 1999, by a notice in the **Federal Register**. Comments concerning any aspect of the remote filing prototype test must be received on or before [insert date 30 days after date of publication of this document in the **Federal Register**].

ADDRESSES: Written comments regarding this notice, and information submitted to be considered for voluntary participation in the prototype should be addressed to the Remote Filing Team, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, Room 5.2 A, Washington, DC 20229–0001.

FOR FURTHER INFORMATION CONTACT: For systems or automation issues: Joseph Palmer (202) 927–0173, Jackie Jegels (301) 893–6717, or Patricia Welter (305) 869–2782.

For operational or policy issues: Jennifer Engelbach (202) 927–2293, or Bonnie Brigman (202) 927–0294.

SUPPLEMENTARY INFORMATION:

Background

Title VI of the North American Free Trade Agreement Implementation Act (the Act), Pub. L. 103–182, 107 Stat. 2057 (December 8, 1993), contains provisions pertaining to Customs Modernization (107 Stat. 2170). Subtitle B of title VI establishes the National Customs Automation Program (NCAP), an automated and electronic system for the processing of commercial importations. Section 631 in Subtitle B of the Act creates sections 411 through 414 of the Tariff Act of 1930 (19 U.S.C. 1411–1414). These define and list the existing and planned components of the NCAP (Section 411), promulgate program goals (Section 412), provide for the implementation and evaluation of the program (Section 413), and provide for remote location filing (Section 414).

The Remote Location Filing (RLF) prototype will allow an approved participant to file electronically a formal or informal consumption entry with Customs from a location within the United States other than the port of arrival (POA), or from within the port of arrival with a requested designated exam site (DES) outside of the POA. Section 101.9(b) of the Customs Regulations (19 CFR 101.9(b)), implements the testing of NCAP components. See, T.D. 95–21 (60 FR 14211, March 16, 1995).

Since June 1994, the Customs Remote Team has shared the Customs RLF concept through many public meetings and concept papers, as well as posted information on the Customs Electronic Bulletin Board (CEBB), the Customs Administrative Message System, and the Customs Web Site on the Internet at ''http://www.customs.treas.gov/rlf.'' Pursuant to § 101.9, Customs Regulations, Customs has been testing the RLF concept.

On April 6, 1995, Customs announced in the **Federal Register** (60 FR 17605) its plan to conduct the first of at least two prototype tests regarding RLF. The first test, Prototype One, began on June 19,

1995. On February 27, 1996, Customs announced in the **Federal Register** (61 FR 7300) that it was permitting an extension and expansion of the RLF Prototype One until the implementation of Remote Prototype Two. On November 29, 1996, Customs announced in the **Federal Register** (61 FR 60749) its plan to conclude the first prototype test on December 31, 1996, and conduct a second prototype test of RLF commencing no earlier than January 1, 1997. On December 3, 1997, Customs announced in the **Federal Register** (62 FR 64043) its plan to extend the second prototype through December 31, 1998. In today's document, Customs is announcing that it will permit a second extension of the RLF Prototype Two.

The first remote location prototype test was offered in the Automated Commercial System (ACS). Although the second remote prototype test was originally scheduled to be tested in the Automated Commercial Environment (ACE), the success of Prototype One precipitated the second test under ACS with a larger participant pool. Remote location filing will be a capability of ACE.

Additional prototypes of RLF are being developed by Customs to determine the systemic and operational design of the final RLF program which will allow all filers to participate in this type of entry process at the national level. Prototype participants must recognize that these prototypes test the benefits and potential problems of RLF for Customs, the trade community, and other parties impacted by this program.

Description of RLF Program

The RLF program will be determined by the experiences of the planned remote prototypes and with other Customs initiatives, such as the Trade Compliance Redesign, and ACE. The Customs RLF team's objectives are:

(1) To work with the trade community, other agencies, and other parties impacted by this program in the design, conduct, and evaluation of the second prototype test of RLF;

(2) To obtain experience through prototype tests of RLF for use in the design of operational procedures, automated systems, and regulations; and

(3) To implement RLF at the national level in conjunction with the Trade Compliance Redesign and ACE.

Description of Proposed Test

Prototype Two commenced January 1, 1997, and will run until concluded, no earlier than December 31, 1999, by a notice in the **Federal Register**. Prototype Two will evaluate the operational impact and procedures for a larger participant base, and test filing from a remote location and alternate location examinations.

Regulatory Provisions Suspended

Certain provisions in Parts 111 and Part 141 of the Customs Regulations will be suspended during this prototype test. This will allow brokers to file remotely to service ports, designated as ''broker districts'' in accordance with a general notice published in the **Federal Register** (60 FR 49971, dated September 27, 1995), where they currently do not hold permits, and allow for the movement of cargo from its POA to a DES outside of the POA.

Eligibility Criteria

To qualify, a participant must have proven capability to provide electronically, on an entry-by-entry basis, the following: entry; entry summary; invoice information using the Electronic Invoice Program (EIP) when required by Customs; and the payment of duties, fees, and taxes through the Automated Clearinghouse (ACH).

The following eleven requirements and conditions apply:

1. Participants must be operational on ACH 30 days before applying for Prototype Two.

2. Participants must be operational on EIP before applying for Prototype Two.

3. The requested Customs locations must have operational experience with EIP and have received RLF training.

RLF Trained Locations

The following are locations currently operational under the RLF Prototype Two test as both ports of arrival (POA) and designated examination sites (DES).

Anchorage, AK
Atlanta, GA
Baltimore, MD
Baton Rouge, LA
Boston, MA
Brunswick, GA
Buffalo, NY
Calais, ME
Champlain-Rouses Point, NY
Charleston, SC
Charlotte, NC
Chattanooga, TN
Chicago, IL
Cincinnati, OH
Cleveland, OH
Columbus, OH
Dayton, OH
Dallas/Fort Worth, TX
Del Rio, TX
Detroit, MI
Durham, Raleigh, NC
Erie, PA
Gloucester, MA
Gramercy, LA
Greenville-Spartanburg, SC
Gulfport, MS
Houlton, ME
Houston, TX
Huntsville, AL
Indianapolis, IN
Jacksonville, FL
JFK International Airport
Knoxville, TN
Lake Charles, LA
Laredo/Eagle Pass, TX
LAX International Airport
Little Rock, AR
Logan Airport, MA
Longview, WA
Los Angeles/Long Beach, CA
Louisville, KY
Memphis, TN
Miami, FL
Morgan City, LA
Mobile, AL
Nashville, TN
New Bedford, MA
New Orleans, LA
Newport News, VA
Norfolk, VA
NY/Newark Area
NY Seaport, NY
Orlando, FL
Pascagoula, MS
Philadeophia/Chester, PA
Port Everglades, FL
Port Huron, MI
Portland, ME
Portland, OR
Portland Int'l Airport, OR
Providence, RI
Richmond, VA
Rochester, NY
San Diego/Otay Mesa, CA
San Francisco/Oakland, CA
Savannah, GA
Seattle, WA
Shreveport, LA
Springfield, MA
Tampa, FL
Toledo, OH
Utica/Syracuse, NY
Vicksburg/Jackson, MS
West Palm Beach, FL
Wilmington, NC
Winston-Salem, NC
Worcester, MA
Washington, DC

Future RLF Trained Locations

As the prototype continues and trade interest warrants, ports which are not currently trained in EIP and RLF processing will be trained. Announcements on newly trained ports will be placed on the CEBB, Administrative Message System, and Customs Web Site on the Internet. One criteria for selecting a port for training will be interest from the trade. Participants who would like to expand their participation to a non-trained port, should send the following information to the Remote Filing Team (at the

address listed at the front of this document):

a. Company name;

b. Contact name and phone number;

c. Importer name;

d. Port(s) of interest; and

e. The estimated number of entries a month.

4. Participants must maintain a continuous bond which meets or exceeds the national guidelines for bond sufficiency.

5. Only entry types 01 (consumption) and 11 (informal) will be accepted.

6. Cargo release must be certified from the entry summary (EI) transaction with the exception of immediate delivery explained in #7.

7. RLF participants will be allowed to file Immediate Delivery releases for direct arrival road and rail freight at the land border using paper invoices under Line Release, Border Cargo Selectivity (BCS), or Cargo Selectivity (CS). This must be done in accordance with 19 CFR 142.21(a). Submission of all line items at the time of release will be required of Northern Border filers if the release is effected using BCS or CS. If an examination is required for a line release transaction, the filer must submit all relevant line item information through BCS or CS. Under BCS and CS, the examination will be performed at the port of arrival using paper invoices. If the filer wishes the examination to be performed at an alternate site, full entry summary information (an EI transaction in ABI) with electronic invoice must be transmitted.

8. Participants will not be allowed to file an RLF entry involving cargo that has already been moved using in-bond procedures.

9. Participants will be required to use other government agency interfaces where available.

10. When necessary, cargo will be examined at the Customs port of arrival, or, at Customs discretion, a filer's requested DES, which must be the Customs port nearest the final destination. The scheduling (approval) of merchandise for examination at a DES that is not at the port of arrival will be considered a conditional release under permit that automatically obligates the importer's bond pursuant to 19 CFR 113.62 for an immediate redelivery to the DES. This **Federal Register** Notice advises the importer of record for such merchandise that this movement is a redelivery and he/she will not receive an individual notice of redelivery, Customs Form 4647, and that the redelivery clause of the importer's bond is automatically triggered whenever Customs decides to examine the merchandise at a DES that is not at the port of arrival.

11. If a notice of redelivery is not complied with, or delivery to unauthorized locations, or delivery to the consignee without Customs permission occurs, the obligors agree to pay liquidated damages in the amount specified pursuant to the bond in 19 CFR 113.62(f).

Customs will work with all participants to ensure that:

(1) Customs contacts and problem solving teams are established, and

(2) Procedures for remote entry and entry summary processing are prepared.

Prototype Two Applications

This notice solicits applications for participation in Remote Location Filing Prototype Two. All applications must initially be submitted to Customs (at the address listed at the front of this document). Applications will be accepted up to 30 days before the close of the Prototype Two extension.

Since this is an extension of Remote Prototype Two, current participants may continue their participation without reapplying. Note that participation in RLF Prototype Two is not confidential, and that lists of participants will be made available to the public. New applicants will follow a two-step application process.

First Stage Application

During the first step, the filer must submit the following information to U.S. Customs Headquarters (address cited above):

1. Filer or Broker name, address, filer code and IRS#;

2. Electronic Invoicing Program status and starting date;

3. Electronic Payment (ACH) status and starting date;

4. Site(s) from which the broker will be transmitting the electronic information;

5. Type of protocol: AII, EDIFACT or both; and

6. Point of contact.

Second Stage Application

Once a filer has received written approval from U.S. Customs Headquarters to proceed with the second step of the application process, the filer must submit the following information to the Port Director(s) overseeing each requested POA and DES location for each client (importer):

1. Participating importer name, telephone number, contact name, and Importer Number;

2. Supplier name, address, and manufacturer's number;

3. Types of commodities to be imported;

4. Other government agency requirements;

5. Site(s) from which the applicant will be transmitting the electronic information;

6. Port name and port code for port(s) of arrival;

7. Port name and port code for designated examination site(s) located nearest the final destination(s);

8. Monthly entry volume anticipated;

9. Carriers used and their Automated Manifest System (AMS) status;

10. Main contact person and telephone number of filer; and

11. Certification that a copy of this application letter has been provided to the Client named in item 1.

Basis for Participant Selection

The basis for applications approved by Customs Headquarters will be EIP operational experience, electronic abilities, available electronic interfaces with other agency's import requirements, and operational limitations. For application scenarios requesting a DES outside of the POA, the compliance rate of the parties involved will be taken into consideration.

The basis for applications being approved or denied by the Port Director(s) will involve issues such as commodity documentation requirements and whether the port has been trained in EIP/RLF.

Upon receipt of an application, the Port Director or designate, will send the applicant a letter of acknowledgment. If there are no issues to be resolved, the application will be considered approved twenty (20) days from the date of the acknowledgment letter. If there are issues to be resolved prior to a decision on the application, the Port Director or designate will send the applicant, within twenty (20) days, a letter indicating that the application is pending further review until joint resolution of the issues can be achieved. If the application is denied, the Port Director or designate will issue a denial letter with reasons to the applicant. If denied, the applicant may appeal to the Remote Filing Team at Headquarters in writing within twenty (20) days from the date of denial or reapply to the Port Director(s).

Misconduct

If a program participant attempts to submit data for merchandise subject to quota, anti-dumping duties, countervailing duties, or other non-eligible merchandise, or fails to exercise reasonable care in the execution of participant obligations and the filing of information regarding the admissibility

of merchandise, and declaring the classification, value, and rate of duty applicable to the merchandise, or otherwise fails to follow the procedures (outlined herein) or applicable laws and regulations, then the participant may be subject to liquidated damages, penalties, and/or other administrative sanctions, expelled or suspended from the prototype, and/or prevented from participation in future prototypes. Customs has the discretion to suspend prototype participation based on the determination that an unacceptable compliance risk exists. This suspension may be invoked at any time after acceptance in the prototype.

Any decision proposing suspension of a participant may be appealed in writing to the Headquarters Remote Team within twenty (20) days of the decision date. Such proposed suspension will apprise the participant of the facts or conduct warranting suspension. Should the participant appeal the notice of proposed suspension, the participant should address the facts or conduct charges contained in the notice and state how he does or will achieve compliance. However, in the case of willfulness or where public health interests or safety are concerned, the suspension may be effective immediately.

Any other action commenced by Customs for misconduct may be appealed in writing through existing procedures or, if none exists, to the Headquarters Remote Team within twenty (20) days of the action.

Test Evaluation Criteria

Once participants are selected, Customs and the participants will meet publicly or in an electronic forum to review comments received concerning the methodology of the test program or procedures, complete procedures in light of those comments, and establish baseline measures and evaluation methods and criteria. Evaluations of the prototype will be conducted and the final results will be published in the **Federal Register** as required by § 101.9(b), Customs Regulations.

The following evaluation methods and criteria have been identified.

1. Baseline measurements will be established through data queries and questionnaires.

2. Reports will be run through use of data query throughout the prototype.

3. Questionnaires will be distributed during and after the prototype period. Participants are required to complete the questionnaires in full and return them within 30 days of receipt.

Customs may evaluate any or all of the following items:

- Workload impact (workload shifts, volume, etc.);
- Policy and procedural accommodation;
- Trade compliance impact;
- Alternate exam site issues (workload shift, coordination/communication, etc.);
- Problem solving;
- System efficiency; and
- The collection of statistics.

The trade will be responsible for evaluating the following items:

- Service in cargo clearance;
- Problem resolution;
- Cost benefits;
- System efficiency;
- Operational efficiency; and
- Other items identified by the participant group.

Dated: December 1, 1998.

Robert S. Trotter,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 98–32459 Filed 12–4–98; 8:45 am]

BILLING CODE 4820–02–P

Federal Register

Monday
December 7, 1998

Part II

Federal Reserve System

12 CFR Parts 208, 211, and 225

Department of the Treasury

Office of the Comptroller of the Currency
12 CFR Part 21

Federal Deposit Insurance Corporation

12 CFR Part 326

Department of the Treasury

Office of Thrift Supervision
12 CFR Part 563

Regulations H, K, and Y: State Banking Institutions Federal Reserve System Membership, International Banking Operations, and Bank Holding Companies and Bank Control Change; ''Know Your Customer'' Requirements; Minimum Security Devices and Procedures and Bank Secrecy Act Compliance; and the Development and Maintenance of ''Know Your Customer'' Programs to Deter and Detect Financial Crimes; Proposed Rules

FEDERAL RESERVE SYSTEM

12 CFR Parts 208, 211, and 225

[Regulations H, K and Y; Docket No. R–1019]

Membership of State Banking Institutions in the Federal Reserve System; International Banking Operations; Bank Holding Companies and Change in Bank Control

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is requesting comments on proposed regulations requiring domestic and foreign banking organizations supervised by the Board to develop and maintain ''Know Your Customer'' programs. As proposed, the regulations would require each banking organization to develop a program designed to determine the identity of its customers; determine its customers' sources of funds; determine, understand and monitor the normal and expected transactions of its customers; and report appropriately any transactions of its customers that are determined to be suspicious, in accordance with the Board's existing suspicious activity reporting regulations. By requiring banking organizations to determine the identity of their customers, as well as to obtain knowledge regarding the legitimate activities of their customers, the proposed regulations will reduce the likelihood that banking organizations will become unwitting participants in illicit activities conducted or attempted by their customers.

The proposed regulations also implement the provisions of 12 U.S.C. 1818(s) by specifically requiring certain bank holding companies and their nonbank subsidiaries, Edge and Agreement corporations, and the U.S. branches and agencies and other offices of foreign banks supervised by the Board to establish and maintain procedures reasonably designed to ensure and monitor compliance with the Currency and Foreign Transaction Reporting Act (31 U.S.C. 5311 *et seq.*) and the accompanying regulations issued thereunder by the United States Department of the Treasury (31 CFR 103.11 *et seq.*)(collectively referred to as the Bank Secrecy Act).

DATES: Comments must be received by March 8, 1999 .

ADDRESSES: Comments should refer to Docket No. R–1019, and may be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, N.W., Washington, D.C. 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Comments received will be available for inspection in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.14 of the Board's Rules Regarding Availability of Information.

FOR FURTHER INFORMATION CONTACT: Richard A. Small, Assistant Director, Division of Banking Supervision and Regulation, (202) 452–5235 or Pamela J. Johnson, Senior Anti-Money Laundering Coordinator, Division of Banking Supervision and Regulation, (202) 728–5829. For users of Telecommunications Devices for the Deaf (TDD) *only* contact Diane Jenkins, (202) 452–3544, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION:

Background

The integrity of the financial sector depends on the ability of banks and other financial institutions to attract and retain legitimate funds from legitimate customers. Banking organizations are able to attract and retain the business of legitimate customers because of the quality and reliability of the services being rendered and, as important, the sound and highly respected reputation of banking organizations. Illicit activities, such as money laundering, fraud, and other transactions designed to assist criminals in their illegal ventures, pose a serious threat to the integrity of financial institutions. When transactions at financial institutions involving illicit funds are revealed, these transactions invariably damage the reputation of the institution involved. While it is impossible to identify every transaction at a financial institution that is potentially illegal or is being conducted to assist criminals in the movement of illegally derived funds, it is fundamental for safe and sound operations that financial institutions take reasonable measures to identify their customers, understand the legitimate transactions to be conducted by those customers and, consequently, identify those transactions conducted by their customers that are suspicious in nature. By identifying and, when appropriate, reporting such transactions, in accordance with existing suspicious activity reporting requirements, financial institutions are protecting their integrity and are assisting the efforts of the bank regulatory agencies and law enforcement authorities to thwart illicit activities at financial institutions.

The Board has long advocated that one of the most effective means by which a financial institution can both protect itself from engaging in transactions designed to facilitate illicit activities and ensure compliance with applicable suspicious activity reporting requirements is for the institution to have adequate ''Know Your Customer'' policies and procedures. While some customers may view ''Know Your Customer'' procedures as an unnecessary intrusion into their privacy, these procedures are important for complying with the Bank Secrecy Act and suspicious activity reporting requirements. The adoption of the proposed ''Know Your Customer'' requirements may also assist banks in ascertaining those banking services that will most effectively serve the customers' interests and for managing risks to the bank. Many financial institutions have already adopted policies and procedures that are consistent with the proposed ''Know Your Customer'' requirements. Additionally, such policies and procedures have enabled banks to better serve their clientele, as well as comply with existing regulatory requirements.

The position of the Board is consistent with that of other countries throughout the world, as evidenced by the pronouncements of several international organizations.[1] Numerous countries have adopted the idea of ''Know Your Customer'' and mandatory suspicious transaction reporting as the best means of protecting the financial sector from participating in the movement of illicit funds. Such ''Know Your Customer'' programs seek to stifle the criminal element, which tends to gravitate towards financial institutions that operate within poorly regulated and supervised jurisdictions, in its attempts to conduct transactions involving illegally derived funds.

The requirement to establish a ''Know Your Customer'' program should assist financial institutions in obtaining

[1] See the Basle Committee on Banking Regulations and Supervisory Practices, ''Statement on the Prevention of Criminal Use of the Banking System for the Purpose of Money Laundering'' (December 1988), as well as the Committee's, ''Core Principles for Effective Banking Supervision'' (April 1997); the 1988 United Nations Vienna Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; the 1990 Council of Europe Convention; and the Financial Action Task Force Forty Recommendations, issued in 1989 and amended in 1996.

information from their customers regarding the identity, the types of transactions to be conducted and the source of funds, among other things. The collection of such information will further assist financial institutions in making a risk-based determination on matters including the extent of identifying information necessary and the amount of monitoring required, by allowing institutions to categorize their customers into different groups based on the types of services being requested and the magnitude and extent of the transactions being conducted. Effective ''Know Your Customer'' programs will evidence the intent of state member banks, bank holding companies, Edge and Agreement corporations, and the U.S. branches and agencies of foreign banks to take all reasonable measures to thwart the facilitation of potential criminal activity.

Effective ''Know Your Customer'' programs will necessarily require that banking organizations develop ''customer profiles'' to understand their customers'' intended relationships with the institution, and, thereafter, realistically determine when customers conduct transactions that are suspicious or potentially illegal. Banking organizations that already recognize the value of effective ''Know Your Customer'' programs and have implemented such programs may have found it difficult to convince customers of the need to provide certain information, especially when other financial institutions do not ask for such information. Because such programs will now be required by regulation, financial institutions will not be prejudiced or criticized for needlessly inquiring into the affairs of their customers. Moreover, legitimate customers should be more willing to provide the information requested by the financial institutions because they will be aware that a similar legal responsibility exists for all banking organizations supervised by the federal bank supervisory agencies.

The Board recognizes that a ''Know Your Customer'' requirement will impose additional burdens on some banking organizations. Mindful of that fact, the Board is striving to impose only those requirements that are necessary to ensure that banking organizations have in place adequate ''Know Your Customer'' programs. In a supplemental document to be provided at the time these regulations become final, the Board, in coordination with the other federal bank supervisory agencies, will provide detailed guidance on specific steps that banking organizations may consider taking as they implement the regulations. The guidance is not intended to provide additional interpretive explanations of the regulations, but rather it will provide concrete examples of proven effective means to accomplish the requirements of the regulations, such as identifying customers and monitoring customer transactions. The Board believes that this approach will strike an appropriate balance that responds to requests for additional guidance in this area while preserving the flexibility for each institution to take steps appropriate for its customers.

In order to ensure the effective implementation of ''Know Your Customer'' programs at each of the domestic and foreign banking organizations supervised by the Board, the proposal also implements the provisions of Section 8(s)(1) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1818(s)(1)). The ''Know Your Customer'' programs required by this proposal would be part of the Bank Secrecy Act-related procedures required to be adopted by the domestic and foreign banking organizations supervised by the Board.

Authority to Issue Regulations

The proposed regulations are authorized pursuant to the Board's statutory authority under Section 8(s)(1) of the Federal Deposit Insurance Act, as amended by Section 2596(a)(2) of the Crime Control Act of 1990 (Pub.L. 101–647), which requires, *inter alia*, the Board to issue regulations requiring state member banks, as well as other domestic and foreign banking organizations operating in the United States supervised by the Board, to establish and maintain internal procedures reasonably designed to ensure and monitor compliance with the Bank Secrecy Act. Effective ''Know Your Customer'' programs serve to facilitate compliance with the Bank Secrecy Act.

The regulations are also being proposed under the Board's general authority to prevent unsafe and unsound practices and to adopt regulations defining safe and sound conduct for banking organizations under its supervision, as well as under the Board's authority to prescribe specific operational and managerial standards for banks, as set forth in 12 U.S.C. 1831p–1(a)(2).

Proposal

The Board proposes to revise 12 CFR Parts 208, 211, and 225 by requiring state member banks, certain bank holding companies and their nonbank subsidiaries, U.S. branches and agencies and nonbank subsidiaries of foreign banks, and Edge and Agreement corporations (collectively referred to as a ''bank'' or ''banks'') to develop and implement a ''Know Your Customer'' program within their institutions.[2]

The requirements of the ''Know Your Customer'' program are set out in general terms, reflecting the Board's view that a ''Know Your Customer'' program that is appropriate for one institution may not be appropriate for another. Under the proposed regulations, the Board would expect each banking organization to design a program that is appropriate to that organization, given its size and complexity, the nature and extent of its activities, its customer base and the levels of risk associated with its various customers and their transactions. The Board believes that this approach is preferable to a detailed regulation that imposes the same list of specific requirements on every organization regardless of its specific circumstances or situation.

The Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision and the National Credit Union Administration are proposing to adopt substantially similar regulations covering national banks, federal branches and agencies of foreign banks, state nonmember banks, insured state chartered branches of foreign banks, savings associations and credit unions, respectively. The Board expects that federal regulators of non-bank financial institutions, such as broker-dealers, will propose similar rules in the future.

The Board proposes to add a new paragraph (d) to section 208.63 of Regulation H of the Board (12 CFR 208.63). New paragraph 208.63(d) describes the requirements for a ''Know Your Customer Program'' at a state member bank. New sections 211.8(b) and 211.24(f)(2) of the Board's Regulation K and new section 225.4(g) of the Board's Regulation Y make all of section 208.63 of the Board's Regulation H, including the new ''Know Your Customer'' provisions of section 208.63(d), applicable to Edge and Agreement corporations, the U.S. branches and agencies of foreign banks (except a federal branch or federal agency or a state branch that is insured by the Federal Deposit Insurance Corporation), and certain bank holding

[2] Generally, the ''Know Your Customer'' requirements set forth in this proposal will be applicable only to those bank holding companies and their nonbank subsidiaries that engage in business activities or transactions with the public and that are involved with the receipt or disbursal of customer funds.

companies and their nonbank subsidiaries, respectively.

Section-by-Section Analysis

Section 208.63—Procedures for Monitoring Bank Secrecy Act Compliance

Paragraph (d)(1)—Purpose

The proposal makes it clear, by delineating the purposes for which a ''Know Your Customer'' program should be developed, that it is in each bank's own best interest to establish and implement such a program. The creation of a ''Know Your Customer'' program is intended to protect the reputation of the bank; facilitate the bank's compliance with all applicable statutes and regulations (including the Bank Secrecy Act and the Board's suspicious activity reporting regulations) and with safe and sound banking practices; and protect the bank from becoming a vehicle for or a victim of illegal activities perpetrated by its customers.

Paragraph (d)(2)—Definitions

Because the text of the proposed regulations is set forth in Regulation H, the term ''bank'' is defined to mean a state member bank. Regulations K and Y will incorporate by reference the ''Know Your Customer'' provisions from Regulation H without repeating the entire text of the regulations and make them applicable to bank holding companies and their nonbank subsidiaries, foreign banks operating in the United States that are subject to the Bank Holding Company Act and their nonbank subsidiaries operating in the United States, Edge corporations, Agreement corporations, and branches and agencies of foreign banks in the United States, subject to Regulations K and Y. In most instances, however, banking organizations that do not engage in business transactions with the public will be excluded from the definition of bank, as set forth in paragraph (d)(2). For example, shell bank holding companies that solely own or control the shares of their subsidiary banks or thrifts and nonbank subsidiaries of bank holding companies that operate solely to service the activities of their affiliates and, in so doing, do not interact in any manner with any public customers will not be covered by this proposal. In addition, the proposed regulations will not apply to credit card banks, bankers banks or other banks that operate solely to service the activities of their affiliates.

The proposed regulations define the term ''customer'' as the person or entity who has an account involving the receipt or disbursal of funds at a bank and any other person or entity on behalf of whom such an account is maintained. The term encompasses direct and indirect beneficiaries of deposit, loan and other accounts that involve the receipt or disbursal of funds. The term also encompasses a person or entity who owns or is represented by the customer. Under this definition, a ''customer'' would include an accountholder, a beneficial owner of an account or a borrower and could include the beneficiary of a trust, an investment fund, a pension fund or company whose assets are managed by an asset manager, a controlling shareholder of a closely held corporation or the grantor of a trust established in an off-shore jurisdiction. The term ''customer'' is not meant to include receipt of services from the bank for which no transaction involving the receipt or disbursal of customer funds occurs, such as a bank's provision of safe deposit boxes.

Paragraph (d)(3)—Establishment of Know Your Customer Program

This section of the proposed regulations requires that each bank supervised by the Board establish a ''Know Your Customer'' program by April 1, 2000. Additionally, this section of the proposal will require that the ''Know Your Customer'' program be reduced to writing and approved by the board of directors of the bank, or a committee thereof, and the approval recorded in the official minutes of the board. For the U.S. offices of foreign banks, such approval may be obtained from the highest level management official in the United States.

Paragraph (d)(4)—Contents of Know Your Customer Program

This section of the proposed regulations sets forth the specific requirements for the contents of the ''Know Your Customer'' program. Banks vary considerably in the way in which they conduct their business on a day-to-day basis. Therefore, the Board believes that to impose regulations that simply require each bank to follow a pre-designed, standardized checklist would not be appropriate. The proposed regulations allow each bank to develop and delineate a system that will comprise the ''Know Your Customer'' program, consistent with the banking practices of the particular bank that, when followed by the bank, will effectively meet the requirements and goals of the regulations. This will allow each bank to design a ''Know Your Customer'' program specifically suited to its own situation that appropriately reflects the size and complexity of the bank, the types of customers it serves and the nature and extent of their activities at the bank.

Additionally, this section recognizes that each bank's ''Know Your Customer'' program may vary depending on the nature of the specific activity, the type of customers involved, the size of the transactions and other factors that reflect the bank's assessment of the risk presented. This section recognizes that it may be beneficial for banks to classify customers into varying risk-based categories that the banks can use in determining the amount and type of information, documentation and monitoring that is appropriate. While these proposed regulations will provide banking organizations with substantial flexibility in devising an appropriate ''Know Your Customer'' program, the Board believes that all ''Know Your Customer'' programs should contain certain critical features, which are set forth herein.

Paragraph (d)(4)(i) of the proposed regulations also requires that the ''Know Your Customer'' program delineate acceptable documentation requirements and the due diligence procedures the bank will follow in meeting the requirements of the proposed regulations. The delineation of this information in the ''Know Your Customer'' program will ensure that the same standards are applied throughout the bank and will inform auditors and examiners of the bank's established standards for review of customer information.

Paragraph (d)(4)(ii) of the proposal sets forth the minimum requirements for an acceptable ''Know Your Customer'' program. The proposed regulations require that, rather than following a ''checklist'' approach, a bank may develop a ''system'' designed to meet the basic requirements of the regulations. The system approach allows each bank to design its own program, in accordance with its own business practices, that will best suit the bank. While this places some burden on the bank to develop the specifics of the ''Know Your Customer'' program, such an approach recognizes that each bank conducts business in accordance with its own policies, procedures, goals and objectives. The ''Know Your Customer'' program, in order to be the most effective, must be developed and implemented with the bank's regular and ordinary business practices in mind. Potentially, there can be a variety of ways in which a ''Know Your Customer'' program can be established and operated to best meet the needs of the bank while fulfilling the requirements of the regulations.

Paragraph (d)(4)(ii)(A) of the proposed regulations requires that the ''Know Your Customer'' program provide a system for determining the identity of customers maintaining accounts at the bank, as defined. It is imperative that a bank establish, to its own satisfaction, that it is dealing with a legitimate person, whether the person is a natural person, corporation or other business entity. The nature and extent of the identification process should be commensurate with the types of transactions anticipated by the customer and the risks associated with such transactions.

The Board does not believe that it is practicable for a financial institution to conduct a large-scale information request from all its existing customers. Rather, the Board contemplates that a financial institution will be able to comply with the proposed regulation with respect to its existing customers by determining their normal and expected transactions using available account data, monitoring their transactions for potentially suspicious activities, and obtaining and documenting additional information from them in order to explain unusual transactions or when otherwise needed. However, for some customers, depending on the severity of the risk associated with such customers and their transactions, it may be necessary to fulfill all of the requirements of these regulations as if these were new customers.

The identity of a prospective customer should be satisfactorily established before a customer relationship with the bank is permanently established. If a prospective customer refuses to provide any of the requested information the customer relationship should not be established. Similarly, if additional or follow-up information is not forthcoming consideration should be given to terminating the relationship.

The best identification documents available for verifying the identity of prospective customers are those which are the most difficult to obtain illicitly and the most difficult to counterfeit. No single form of identification can be guaranteed to be genuine, however, and, therefore, the identification process should be cumulative, obtaining enough information and documentation to assure the bank that it has properly identified the prospective customer.

As an example, an integral part of the identification process should be the prospective customer's address or place of business and telephone number. Verification of this information for some customers could include physical observation of the location at the address provided and return telephone calls, or ''call backs,'' to determine the authenticity of the telephone number provided. Extra consideration may be required when it is determined that a prospective customer is situated outside of the area normally served by the bank.

The identification process for natural persons wishing to establish a customer relationship should, when appropriate and practicable, include the review of appropriate identification documentation. In these instances, acceptable forms of documentation should include within the document a photograph and description of the individual, along with the signature of the individual. The documentation should also be easily recognizable identification issued by a government entity. While not an exhaustive list, some examples of acceptable identification documentation could include: driver's license with photograph issued by the State in which the bank is located;[3] State identity card with photograph issued by the State in which the bank is located; and United States passport or alien registration card. Other forms of identification, while not sufficient to be used without corroboration, are satisfactory as forms of secondary identification that could be used in conjunction with the types of identification documentation described above to assist in identifying or verifying the identity of the prospective customer. Some examples, again while not an exhaustive list, could include: employer identification card; student identification card; out-of-State driver's license; credit card; and current utility bills from place of residence. At a minimum, the accepted forms of identification should be recorded and, if no legal impediment exists, duplicated and maintained in the customer's ''file'' at the bank.

Similarly, for prospective corporate or business customers, the customer identification process should include the review of appropriate documentation that allows for a means to verify that the corporation or other business entity does exist and does engage in the business, as stated. In establishing the identity of a corporate or business customer, the prospective customer should provide evidence of legal status, such as an incorporation document, a partnership agreement, association documents, or a business license. In some instances, it may also be necessary to obtain information on the controlling owners of the business or legal entities. Additionally, the prospective customer should provide a financial statement of the business, a description of the business to include such information as whether the business is in the wholesale or retail markets, and a description of the business's primary area of trade. It also may be appropriate to obtain information related to customers and suppliers of the prospective customer for purposes of verifying information presented by the prospective customer. At a minimum, all documentation reviewed, as well as verifications of the information contained therein, should be recorded and maintained within the customer's ''file'' at the bank.

Any practice of a bank that allows for the establishment of a customer relationship without face to face contact with bank personnel, such as banking by mail or Internet banking, poses difficulties in the identification of the prospective customer by use of the traditionally accepted practice of obtaining identification documentation to include photographic identification. Even though photographic identification in such circumstances will be impractical, other accepted means of identifying a customer are still viable. In such circumstances, special care should be given to verification of address and telephone number, as well as the use of commercially available data to compare such items as name with date of birth and social security number.

Introductions or referrals of prospective customers by established customers of the bank, while extremely valuable in providing background information about the prospective customer, cannot take the place of identification requirements that should be set forth in the bank's ''Know Your Customer'' program. Details regarding the introduction or referral should be documented so that the information obtained can be effectively used to assist in the verification of the prospective customer.

The proposed regulations allow each bank to determine what documentation will be appropriate and acceptable in light of circumstances regarding that particular bank. If the identification process will allow for the possibility of exceptions to the established practice, for, as an example, accounts being established for senior citizens or minors, the possible exceptions should be delineated within the ''Know Your Customer'' program.

Heightened interest in the marketing of private banking activities by banks, as well as the heightened interest by banking customers, in the benefits

[3] For customers that are located in a multi-state regional area, such as the Washington, D.C. metropolitan region, which encompasses parts of Maryland and Virginia, identification documents from a neighboring state would be acceptable.

derived from using private banking services has lead to a demonstrable increase in the number of private banking clients.[4] As the market for private banking grows, so does the level of competition among institutions that provide private banking services. Accordingly, there is increased pressure to obtain new customers, increase the assets under management, and contribute a greater percentage to the net income of the bank.[5] Emphasizing customer growth, without adopting appropriate procedures to understand a customer's personal and business background, source of funds and intended use of the private banking services, may well certainly lead to increased reputational and legal risks.

Typically, private banking customers make use of such account vehicles as personal investment companies (PICs), trusts, personal mutual investment funds, or are clients of financial advisors. The establishment of such accounts serves the stated purposes of protecting the legitimate confidentiality and financial privacy of the customers that use such accounts. However, banks need to identify properly the beneficial owners of such accounts, through an effective ''Know Your Customer'' program. Therefore, ''Know Your Customer'' procedures for identifying the beneficial owners of such accounts should be no different than the procedures for identifying other customers of the bank. Any needed confidentiality required by customers of a bank's private bank can be addressed by the development of special protections to limit access to information that would generally reveal the beneficial owners of these accounts.[6]

Equally important is the identification of beneficial owners of assets bought, sold or managed through a relationship with a bank. Such transactions often occur at the behest of intermediaries, such as asset managers, who may or may not be registered investment advisors, who deal with banks on behalf of one or more of their clients. For purposes of the proposed regulations, the ''customer'' of the bank in these types of situations would include the beneficiaries of the transactions and not just the intermediaries. The extent of the information regarding the customer that may be necessary to fulfill the bank's ''Know Your Customer'' obligations should depend on a risk-based assessment of the customer and the transactions that will occur, such as the type, duration and size of the transactions, and should be addressed within the bank's ''Know Your Customer'' program.

Ultimately, the amount of information necessary to identify adequately the beneficial owner of an account should be the result of a risk assessment of the customer and the intended transactions of the customer. The bank's ''Know Your Customer'' program should provide the flexibility to group or categorize customers in a manner that allows the bank to better determine the amount of information necessary for such groups or categories. In some instances, however, it may not be necessary to determine the identity of the beneficiaries of the bank's customers, because the identity of these customers has already been satisfactorily established. For example, if the bank's customer is a widely-held mutual fund or asset management fund, a bank does not have to ''know'' all of the customer's shareholders and certainly does not have to monitor the shareholders' individual transactions that may occur through the bank. Similarly, in the event that a bank's customer is a financial institution supervised by the Board or another federal or state financial institutions supervisory agency and the bank is acting as an intermediary for the financial institution that is the bank's customer in such activities as check clearing or funds transfer processing, the bank is under no obligation to ''know'' the customers of the financial institution or monitor the transactions of the financial institution's customers. On the other hand, if the bank's customer is a mutual fund established in an off-shore jurisdiction that has a limited number of shareholders, the bank will be required to ''know'' the customers of the mutual fund.

Paragraph (d)(4)(ii)(B) of the proposed regulations requires that the ''Know Your Customer'' program provide a system for determining the source of funds of customers. An effective ''Know Your Customer'' program requires that a bank understand the nature and source of the funds being placed in the bank by the customer including the types of instruments used and from where the funds or assets were derived or generated. Under standards that currently exist in criminal law, failure to obtain knowledge that is readily available, such as the source of funds of a particular customer, because of a desire to avoid the perceived embarrassment of having to obtain such information, can lead to the prosecution for a money laundering violation when it is later determined that the funds in question were derived from illicit activity.[7] Adoption of, and adherence to, a ''Know Your Customer'' program can substantially minimize the risks to a bank.

For purposes of determining and documenting the source of funds, the amount of information necessary can depend on the type of customer in question. As an example, for a majority of retail banking customers that maintain transaction accounts, where practically the only source of funds comes from payroll deposits, it is a relatively simple task to identify and document the source of funds as payroll deposits. On the other hand, a more detailed analysis, with a more extensive documentation process, would necessarily be required for high net worth customers with multiple deposits from a variety of sources. For these reasons, among others, it may be beneficial for banks to classify customers into varying categories, based on such factors as the types of accounts maintained and the types of transactions conducted and the potential risk of illicit activities associated with such accounts and transactions. Banks could then develop procedures, as part of the ''Know Your Customer'' programs, to obtain necessary information and documentation based on the risk assessment for the various categories or classes established by a bank.

Paragraph (d)(4)(ii)(C) of the proposed regulations requires that the ''Know Your Customer'' program provide a system for determining customers'' normal and expected transactions involving the bank. The primary objective of such a process is to enable the bank to predict with relative certainty the types of transactions in which a customer is likely to be engaged. Without an understanding of the normal and expected transactions of the customers of the bank is virtually impossible to determine if any particular transaction conducted by a customer is suspicious.

Understanding a customer's normal and expected transactions is not a task

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[4] For an in-depth discussion of private banking and sound practices associated with the administration of private banking activities, see the July 1997 Guidance on Sound Risk Management Practices Governing Private Banking Activities, prepared by the Federal Reserve Bank of New York and issued by the Board (hereinafter referred to as the ''Sound Practices Paper''). The Sound Practices Paper was distributed, or made available, to banking organizations supervised by the Board by the Federal Reserve Banks pursuant to the Board's Division of Banking Supervision and Regulation SR Letter 97–19 (SUP). Copies of the Sound Practices Paper and SR Letter are available on the Board's public Internet web site (www.federalreserve.gov).

[5] *See* Sound Practices Paper at page 2.

[6] For a more specific discussion of suggested ''Know Your Customer'' procedures appropriate for private banking operations *see generally* Sound Practices Paper.

[7] *See* 18 U.S.C. 1956 and 1957.

that can be accomplished entirely at the inception of the account relationship. While it should be a simple task to obtain and record information as to a customer's expectations at the time of account opening, only after reviewing the customer's activity for a given period of time can a determination as to the customer's normal transactions be made. For this reason, effective ''Know Your Customer'' procedures for determining the normal and expected transactions for a bank's customers should envision an amount of time adequate to make these assessments.

The ''Know Your Customer'' procedures for determining normal and expected transactions should also take into consideration the type of account that is being established. As an example, a demand deposit account associated with a payroll deposit will not require an inordinate effort to determine that the customer will, most likely, use the account for ordinary living expenses and the deposit of the customer's salary. Conversely, a business account or an account maintained by a private banking customer may require a more in-depth analysis of the customer's intended use of the account coupled with a heightened ongoing review of account activity to determine if, in fact, the customer has acted in accordance with the expectations developed at the inception of the account relationship.

Paragraph (d)(4)(ii)(D) of the proposed regulations requires that the ''Know Your Customer'' program provide a system for monitoring, on an ongoing basis, the transactions conducted by customers to determine if their transactions are consistent with the normal and expected transactions for particular customers or for customers in the same or similar categories or classes. The proposed regulations do not require that every transaction of every customer be reviewed on a daily basis. However, banks must develop and implement effective monitoring systems, commensurate with the risks presented by the types of accounts maintained at the bank and the types of transactions conducted through those accounts.

The Board is not suggesting that banks must expend considerable resources to purchase sophisticated computer hardware or software as a means of complying with the proposed regulations. The effectiveness of the monitoring system of a bank's ''Know Your Customer'' program will be based on that particular bank's ability to monitor transactions consistent with the volume and types of transactions conducted at the bank.

There are numerous means by which a system can be developed to carry out the ongoing monitoring of the transactions being conducted by the customers of the bank. Therefore, it would be appropriate for a bank to design a monitoring system that would correspond to the risk associated with the types of accounts maintained and the types of transactions conducted through those accounts.

The design of such a monitoring system, for example, could involve the classification of accounts into various categories based on such factors as the type of account, the types of transactions conducted in the various types of accounts, the size of the account, the number and size of transactions conducted through the account, and the risk of illicit activity associated with the type of account and the transactions conducted through the account. For certain classes or categories of accounts, which may be the majority of accounts at some banks, it may be sufficient for an effective monitoring system to establish parameters for which the transactions within these accounts will normally occur. Rather than monitoring each transaction, an effective monitoring system could entail monitoring only for those transactions that exceed the established parameters for that particular class or category of accounts. Under the proposed regulations, a bank's determination as to how to monitor its various accounts based on the risks associated with those accounts will be given great deference by the Board.

In many instances, monitoring is already occurring. As an example, monitoring of transactions already occurs as a means of complying with existing suspicious activity reporting regulations. Similarly, monitoring occurs for such things as large cash transactions, check kiting and attempted withdrawals from accounts with insufficient funds or from closed accounts.

For other categories or classes of accounts, it may be necessary to monitor most, if not all, transactions conducted. One such example are transactions conducted by private banking customers. As a general proposition, transactions of private banking customers usually involve large sums of money. For this reason alone, it is important that a bank understands the nature of these transactions and reviews these transactions to ensure that the transactions are consistent with the normal and expected transactions for that particular customer or for customers in the same or similar categories or classes. It is the Board's experience that relationship managers are very aware of transactions conducted by a private banking customer and, in most instances, assist the private banking customer in conducting the transactions. Therefore, there should be little, if any, hardship associated with reviewing transactions to ensure that they are consistent with the normal and expected transactions for that particular customer.

Many banks already engage in sufficient account monitoring activities. These practices should be formalized in a sound ''Know Your Customer'' program, which will ensure that banks have identified and implemented procedures that adequately monitor a broad range of account activity while providing flexibility in defining the requisite monitoring activity in light of the risks associated with particular customers and the transactions being conducted.

Paragraphs (d)(4)(ii)(E) of the proposed regulations require that the ''Know Your Customer'' program provide a system for determining if a transaction is suspicious and making a report, when necessary, in accordance with the Board's suspicious activity reporting regulations. In identifying reportable transactions, a bank should not conclude that every transaction that falls outside what is expected for a given customer, or for categories or classes of customers, should be reported. Rather, a bank should focus on patterns of inconsistent transactions and isolated transactions that present risk factors that warrant further review.

Paragraph (d)(5)—Compliance With Know Your Customer Program

Paragraph (d)(5) of the proposed regulations sets forth the requirements a bank must follow to ensure that it is in compliance with its ''Know Your Customer'' program. The requirements include that a bank provide for and document a system of internal controls to ensure ongoing compliance, as well as provide for and document independent testing for compliance with the ''Know Your Customer'' program. Additionally, the bank must designate an individual responsible for coordinating and monitoring day-to-day compliance and provide for and document training to all appropriate personnel of the content and requirements of the ''Know Your Customer'' program.

Paragraph (d)(6)—Availability of Documentation

Paragraph (d)(6) of the proposed regulations requires, for all accounts opened or maintained in the United States, that all information and documentation necessary to comply

with the regulations be made available for examination and inspection, at a location specified by a Board or Reserve Bank representative, within 48 hours of a request for the provision of such information and documentation. In instances where the information and documentation is at a location other than where the customer's account is maintained or the financial services are rendered, the bank must include, as part of its ''Know Your Customer'' program, specific procedures designed to ensure that the information and documentation is reviewed on an ongoing basis by appropriate bank personnel.

Issues may arise, on occasion, concerning whether foreign laws permit a bank to disclose certain customer information to bank supervisory agencies, such as the Board. The Board believes that nondisclosure provisions that may exist in foreign, if they exist, should not, in any event, present a bar to the disclosure of such information and documentation. In instances where foreign laws have been raised as creating a prohibition to the disclosure of information that is required by the proposed regulations, the Board's experience is that the information already exists within the banking organization in the United States because the information is used by the relationship manager, who resides in the United States, as well as other components of the bank, to provide banking services to the customer. Moreover, in other instances where banks have raised foreign law disclosure issues, the banks, at the Board's suggestion, have obtained from their customers waivers to any perceived prohibition to disclosure of the information and documentation. Therefore, in the opinion of the Board, there is no prohibition or insurmountable bar to the disclosure of the required information and documentation.

Comments Sought

In addition to other comments that commenters may feel are appropriate, the Board is seeking comments specific to the following:

1. Whether the proposed definition of ''customer'' is sufficient to include all persons who benefit from the transactions conducted at the bank, such as persons who establish off-shore shell companies or entities or otherwise conduct their business through intermediaries.

2. Whether the proposed definition of ''customer'' is too broad and will unnecessarily include persons that pose a minimal ''Know Your Customer'' risk.

3. Whether a bank's ''Know Your Customer'' program should apply to a bank's counterparty relationships with respect to transactions in wholesale financial markets (e.g., sales or purchases involving foreign exchange or securities) and correspondent banking relationships or if, in such markets, a different standard than that applicable to retail relationships would be more appropriate and, if such a distinction is appropriate, how the definition of ''customer'' can be distinguished between transactional counterparty customers, correspondents and retail customers.

4. Whether the proposed regulations will create a competitive disadvantage with respect to other financial sector entities offering similar services that may not be subject to the proposed regulations (citing, where possible, specific examples).

5. Whether the proposed regulations will create a competitive disadvantage with respect to other financial entities offering similar services that may not be subject to similar regulations.

6. Whether the actual or perceived invasion of personal privacy interests is outweighed by the additional compliance benefits anticipated by this proposal.

7. Whether there would be a minimum account size threshold below which the ''Know Your Customer'' requirements would be waived.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 605(b)), the initial regulatory flexibility analysis otherwise required under section 603 of the RFA (5 U.S.C. 603) is not required if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and the agency publishes such certification and a succinct statement explaining the reasons for such certification in the **Federal Register** along with its general notice of proposed rulemaking.

The Board hereby certifies that the proposal will not have a significant economic impact on a substantial number of small entities. The proposal should result in a net benefit to banks regardless of size because it establishes uniform rules relating to the identification of customers for all banking organizations supervised by the Board. Most banking organizations, from small to large, already have policies and procedures aimed at collecting, retaining and reviewing the types of information required by this proposal, and there should, thus, be little economic impact from this proposal.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget.

The collection of information requirements in this proposed regulation are found in 12 CFR 208, 211, and 225. This information is required to evidence compliance with section 8(s) of the Federal Deposit Insurance Act. The recordkeepers are for-profit financial institutions, including small businesses. Records must be retained for five years for inspection under the institution's established standards for review of customer information and pursuant to the Bank Secrecy Act.

The OMB control number for the information collection contained in the proposed rule is 7100–0212. The Board may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number.

Recordkeepers for this information collection include all state member banks, U.S. branches and agencies of foreign banks, Edge and agreement corporations supervised by the Board, and certain bank holding companies and nonbank subsidiaries of bank holding companies.[8] The Federal Reserve estimates there will be 3,500 recordkeepers in the first year; in subsequent years, the recordkeepers will consist of newly-chartered institutions subject to the rule. The majority of the paperwork burden associated with the proposed rule is the one-time cost of developing a plan and implementing written policies and procedures. In the normal course of business, most institutions likely already have sufficient information about their customers in their files and would only need to organize and review such information. Because each institution would design its own program in accordance with its own business practices, the Federal Reserve estimates that the burden of the proposed rule would vary considerably and may range from ten to thirty hours.

The proposed rule is not expected to significantly increase the ongoing annual burden for the recordkeepers because most of the ongoing burden is incurred and accounted for under other existing information collections.

[8] The proposed rule will not apply to shell bank holding companies.

Ongoing costs include gathering the required information about customers (to the extent that the bank does not already possess such information), monitoring customer transactions, and reporting unusual or suspicious transactions. Institutions likely perform most, if not all, of these tasks currently as part of their fraud prevention procedures, as part of their monitoring of transactions for reporting on the Department of the Treasury's Currency Transaction Reports (OMB No.1545–0183), and as part of their procedures to detect violations or suspicious activity reported on the Suspicious Activity Report. Because the records would be maintained at the subject organizations and are not provided to the Board, no issue of confidentiality under the Freedom of Information Act arises.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions, including whether the information has practical utility; (b) the accuracy of the Board's estimate of the burden of the proposed information collection, including the cost of compliance; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collection of information should be sent to Mary M. McLaughlin, Chief, Financial Reports Section, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments to be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0212), Washington, DC 20503.

List of Subjects

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Flood insurance, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 211

Exports, Federal Reserve System, Foreign banking, Holding companies, Investments, Reporting and recordkeeping requirements.

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, parts 208, 211, and 225 of chapter II of title 12 of the Code of Federal Regulations are proposed to be amended as set forth below:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for 12 CFR Part 208 continues to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1823(j), 1828(o), 1831o, 1831p–1, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o–4(c)(5), 78o–5, 78q, 78q–1, and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. Section 208.63 is amended by adding a new paragraph (d) to read as follows:

§ 208.63 Procedures for monitoring Bank Secrecy Act Compliance.

* * * * *

(d) *Know your customer program*—(1) *Purpose.* This paragraph (d) requires that member banks establish and regularly maintain procedures reasonably designed to determine the identity of their customers, as well as their customers' normal and expected transactions and sources of funds involving the bank. These procedures (referred to as the ''Know Your Customer'' program) are intended to: protect the reputation of the bank; facilitate the bank's compliance with all applicable statutes and regulations (including the Bank Secrecy Act and the suspicious activity reporting requirements of 12 CFR 208.20) and with safe and sound banking practices; and protect the bank from becoming a vehicle for or a victim of illegal activities perpetrated by its customers. In general, the ''Know Your Customer'' rules apply to all state member banks, however, the rules do not apply to credit card banks, bankers' banks, or banks that operate solely to service the activities of their affiliates.

(2) *Definitions.* For the purposes of this paragraph (d):

(i) *Bank* means a state member bank.

(ii) *Customer* means:

(A) Any person or entity who has an account involving the receipt or disbursal of funds with a bank; and

(B) Any person or entity on behalf of whom such an account is maintained.

(3) *Establishment of Know Your Customer program.* By April 1, 2000, each bank shall develop and provide for the continued administration of a Know Your Customer program. The Know Your Customer program shall be reduced to writing and approved by the board of directors (or a committee thereof) with the approval recorded in the official minutes of the board.

(4) *Contents of Know Your Customer program.* The Know Your Customer program may vary in complexity and scope depending on different categories or classes of customers established by the bank and the potential risk of illicit activities associated with those customers' accounts and transactions. Components of the program should include the following:

(i) Appropriate documentation requirements and due diligence procedures established by the bank to comply with this paragraph (d); and

(ii) A system for:

(A) Determining the identity of the bank's new customers and if the bank has reasonable cause to believe that it lacks adequate information to know the identity of existing customers, determining the identity of those existing customers;

(B) Determining the customer's sources of funds for transactions involving the bank;

(C) Determining the particular customer's normal and expected transactions involving the bank;

(D) Monitoring customer transactions and identifying transactions that are inconsistent with normal and expected transactions for that particular customer or for customers in the same or similar categories or classes, as established by the bank; and

(E) Determining if a transaction is suspicious, in accordance with the Board's suspicious activity reporting regulations and reporting accordingly.

(5) *Compliance with Know Your Customer program.* The bank shall comply with its Know Your Customer program. To ensure compliance, the bank shall:

(i) Provide for and document a system of internal controls;

(ii) Provide for and document independent testing for compliance to be conducted by bank personnel or by an outside party on a regular basis;

(iii) Designate an individual or individuals responsible for coordinating and monitoring day-to-day compliance; and

(iv) Provide for and document training to all appropriate personnel, on at least an annual basis, of the content and required procedures of the Know Your Customer program.

(6) *Availability of documentation.* For all accounts opened or maintained in the United States, each bank must

ensure that all information and documentation sufficient to comply with the requirements of this paragraph (d) are available for examination and inspection, at a location specified by a Board or Reserve Bank representative, within 48 hours of a Board or Reserve Bank representative's request for such information and documentation. In instances where the information and documentation is maintained at a location other than where the customer's account is maintained or the financial services are rendered, the bank must include, as part of its Know Your Customer program, specific procedures designed to ensure that the information and documentation is reviewed on an ongoing basis by appropriate bank personnel in order to comply with this paragraph (d).

PART 211—INTERNATIONAL BANKING OPERATIONS (REGULATION K)

1. The authority citation for 12 CFR part 211 continues to read as follows:

Authority: 12 U.S.C. 221 *et seq.*, 1818, 1835a, 1841 *et seq.*, 3101 *et seq.*, 3901 *et seq.*

2. A new § 211.9 would be added to read as follows:

§ 211.9 Procedures for monitoring Bank Secrecy Act compliance.

(a) Each Edge corporation or any branch or subsidiary thereof, Agreement corporation or branch or subsidiary thereof, shall, by April 1, 2000, in accordance with the provisions of § 208.63 of the Board's Regulation H, 12 CFR 208.63, develop and provide for the continued administration of:

(1) A program reasonably designed to ensure and monitor compliance with the provisions of subchapter II of chapter 53 of title 31, United States Code, the Bank Secrecy Act, and the implementing regulations promulgated thereunder by the Department of the Treasury at 31 CFR part 103; and

(2) A ''Know Your Customer'' program reasonably designed to identify customers of the Edge or Agreement corporation or subsidiary thereof, including customers' normal and expected transactions at or through the institution.

3. Section 211.24 is amended as follows:

a. Paragraph (f) is redesignated as paragraph (f)(1); and

b. A new paragraph (f)(2) is added.

The addition would read as follows:

§ 211.24 Approval of officers of foreign banks; procedures for applications; standards for approval; representative-office activities and standards for approval; preservation of existing authority; reports of crimes and suspected crimes; government securities sales practices.

* * * * *

(f) *Reports of crimes and suspected crimes.*—(1) * * *

(2) *Procedures for monitoring Bank Secrecy Act compliance.* Each branch and agency of a foreign bank (except a federal branch or a federal agency or a state branch that is insured by the Federal Deposit Insurance Corporation) in the United States shall, by April 1, 2000, in accordance with the provisions of § 208.63 of the Board's Regulation H, 12 CFR 208.63, develop and provide for the continued administration of:

(i) A program reasonably designed to ensure and monitor compliance with the provisions of subchapter II of chapter 53 of title 31, United States Code, the Bank Secrecy Act, and the implementing regulations promulgated thereunder by the Department of the Treasury at 31 CFR part 103; and

(ii) A ''Know Your Customer'' program reasonably designed to identify customers of the branch or agency, including customers' normal and expected transactions at or through the institution.

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for 12 CFR part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(l), 3106, 3108, 3310, 3331–3351, 3907, and 3909.

2. Section 225.4 is amended by adding a new paragraph (g) to read as follows:

§ 225.4 Corporate practices.

* * * * *

(g) *Procedures for Monitoring Bank Secrecy Act Compliance.*—(1) By April 1, 2000, each company described in paragraph (g)(2) of this section, shall, in accordance with the provisions of § 208.63 of the Board's Regulation H, 12 CFR 208.63, develop and provide for the continued administration of:

(i) A program reasonably designed to ensure and monitor compliance with the provisions of subchapter II of chapter 53 of title 31, United States Code, the Bank Secrecy Act, and the implementing regulations promulgated thereunder by the Department of the Treasury at 31 CFR part 103; and

(ii) A ''Know Your Customer'' program reasonably designed to identify customers of the company, subsidiary, or foreign bank including customers' normal and expected transactions at or through the institution.

(2) Paragraph (g)(1) of this section shall apply to each company that:

(i)(A) Is a bank holding company or a nonbank subsidiary thereof; or

(B) Is a nonbank company operating in the United States that is a subsidiary of a foreign bank that is a bank holding company or that is subject to the BHC Act by virtue of section 8(a) of the International Banking Act (12 U.S.C. 3106(a)); and

(ii) Holds accounts involving the receipt or disbursal of funds for persons other than affiliates.

By order of the Board of Governors of the Federal Reserve System, December 1, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–32332 Filed 12–4–98; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 21

[Docket No. 98–15]

RIN 1557–AB66

''Know Your Customer'' Requirements

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC).

ACTION: Notice of proposed rulemaking.

SUMMARY: The OCC is proposing to issue a regulation requiring national banks to develop and maintain ''Know Your Customer'' programs. As proposed, the regulation would require each bank to develop a program designed to determine the identity of its customers; determine its customers' sources of funds; determine the normal and expected transactions of its customers; monitor account activity for transactions that are inconsistent with those normal and expected transactions; and report any transactions of its customers that are determined to be suspicious, in accordance with the OCC's existing suspicious activity reporting regulation. By requiring banks to determine the identity of their customers, as well as to obtain knowledge regarding the legitimate activities of their customers, the proposed regulation will reduce the likelihood that banks will become unwitting participants in illicit activities conducted or attempted by their customers.

DATES: Comments must be received by March 8, 1999.

ADDRESSES: Comments should be directed to: Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219, Attention: Docket No. 98–15. Comments will be available for public inspection and photocopying at the same location. In addition, comments may be sent by fax to (202) 874–5274, or by electronic mail to regs.comments@occ.treas.gov.

FOR FURTHER INFORMATION CONTACT: Robert Pasley, Assistant Director, Enforcement and Compliance Division (202) 874–4879; Thomas Fleming, Compliance Specialist (202) 874–4879, or Susan Quill, Compliance Expert (202) 874–4879, Community and Consumer Policy; or Mark Tenhundfeld, Assistant Director, Legislative and Regulatory Activities Division (202) 874–4879.

SUPPLEMENTARY INFORMATION:

Background

The integrity of the financial sector depends on the ability of banks and other financial institutions to attract and retain legitimate funds from legitimate customers. Banks are able to attract and retain the business of legitimate customers because of the quality and reliability of the services being rendered and, as important, the sound and highly respected reputation of banks. Illicit activities, such as money laundering, fraud, and other transactions designed to assist criminals in their illegal ventures, pose a serious threat to the integrity of banks. When transactions at banks involving illicit funds are revealed, these transactions invariably damage the reputation of the banks involved. While it is impossible to identify every transaction at a bank that is potentially illegal or is being conducted to assist criminals in the movement of illegally derived funds, it is fundamental for safe and sound operations that banks take reasonable measures to identify their customers, understand the normal and expected transactions typically conducted by those customers, and, consequently, identify those transactions conducted by their customers that are suspicious in nature. By identifying and, when appropriate, reporting such transactions in accordance with existing suspicious activity reporting requirements, banks are protecting their integrity and are assisting the efforts of the bank regulatory agencies and law enforcement authorities to combat illicit activities at financial institutions.

One of the most effective means by which a bank can both protect itself from engaging in transactions designed to facilitate illicit activities and ensure compliance with applicable suspicious activity reporting requirements is for the bank to have adequate Know Your Customer policies and procedures. By knowing its customers, a bank is both better able to serve the legitimate needs of its customers and to fulfill its compliance responsibilities, including its Bank Secrecy Act and suspicious activity reporting requirements.

Recognizing that a Know Your Customer program for one bank will not necessarily be appropriate for another, the proposed regulation focuses on the basic components that the OCC believes should be contained in any Know Your Customer program. In supplemental guidance to be provided at the time this regulation becomes final, the OCC will provide further information about specific steps that banks may consider taking to ensure that their Know Your Customer programs comport with the regulations. The OCC believes that this approach strikes an appropriate balance that responds to requests for additional guidance in this area while preserving the flexibility for each bank to take steps appropriate for the size and complexity of its business.

Privacy Issues

The proposed regulation requires banks to gather information about customers that, if misused, could result in an invasion of a customer's privacy. Accordingly, it is the OCC's expectation that, in complying the Know Your Customer regulation, a bank will obtain only that information that is necessary to comply with the regulation and will limit the use of this information to complying with the regulation. Financial institutions need to safeguard and handle responsibly the information gathered in connection with complying with these obligations, and should integrate comprehensive privacy practices into their Know Your Customer programs.

Authority to Issue Regulation

The proposed regulation is authorized pursuant to the OCC's statutory authority under section 8(s)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1818(s)(1)), as amended by section 2596(a)(2) of the Crime Control Act of 1990 (Pub. L. 101–647), which mandates that the OCC issue regulations requiring banks under its supervision to establish and maintain internal procedures reasonably designed to ensure and monitor compliance with the Bank Secrecy Act. Effective Know Your Customer programs serve to facilitate compliance with the Bank Secrecy Act.

Proposal

The OCC proposes to revise 12 CFR Part 21 by requiring national banks to develop and implement Know Your Customer programs. Under the proposed regulation, the OCC would expect each bank to design a program that is appropriate given the bank's size and complexity, the nature and extent of its activities, its customer base and the levels of risk associated with its various customers and their transactions. The OCC believes that this approach is preferable to a detailed regulation that imposes the same list of specific requirements on every bank regardless of its circumstances.

Each of the other Federal bank supervisory agencies is proposing to adopt Know Your Customer regulations covering state member and nonmember banks, state-chartered branches and agencies of foreign banks, and savings associations.[1] The OCC also has been discussing with the Federal regulators of non-bank financial institutions, such as broker-dealers, the need to propose similar rules governing the activities of these non-bank institutions.

Section-by-Section Analysis

The OCC proposes to add a new § 21.22. The various components of the Know Your Customer rule are summarized below.

Purpose and scope (§ 21.22(a))

The purposes of adopting a Know Your Customer program are to protect the reputation of the bank; to facilitate the bank's compliance with all applicable statutes and regulations (including the Bank Secrecy Act and the OCC's suspicious activity reporting regulations) and with safe and sound banking practices; and to protect the bank from becoming a vehicle for, or a victim of, illegal activities perpetrated by its customers. The rules apply, as a general matter, to all national banks. However, the rules do not apply to credit card banks, bankers' banks, or other banks that operate solely to service the activities of their affiliates. The OCC recognizes that certain banks operate solely to service the activities of their affiliates or other banks and, in so doing, do not interact in any manner with any public customers. The OCC does not intend the proposed regulation

[1] As of the date this proposed rule was signed, the National Credit Union Administration was still reviewing the issue of whether to adopt a regulation that would create similar Know Your Customer obligations for credit unions.

to impose any requirements on those banks.

The rules also apply to all Federal branches or agencies of foreign banks licensed or chartered by the OCC. The OCC expects U.S. banks to implement Know Your Customer systems in their overseas branches that are equivalent to those that they have in the United States in order to minimize the risk to the bank posed by illegal activities in the overseas branches.

Definition of Customer (§ 21.22(b))

The proposed regulation defines the term ''customer'' as any person or entity who has an account involving the receipt or disbursal of funds with an institution covered by this regulation and any person or entity on behalf of whom an account is maintained. If, for instance, a bank knows that an account is opened on behalf of a third party, the bank will need to treat as a customer both the person or entity opening the account and the person or entity for whom the account is opened. The regulation applies to deposit accounts, loan accounts, and any other type of account involving the receipt or disbursal of funds. It does not include, for instance, transactions such as renting safe deposit boxes.

Except for the provisions regarding identifying customers (*see* the discussion of paragraph (d)(2)(i) of the proposed rule, below) the proposed regulation does not differentiate between current customers and new customers. The effectiveness of a bank's Know Your Customer program would be greatly reduced if all customer accounts in existence prior to the effective date of the regulation were excluded from its scope. However, the OCC does not believe that it is practicable for a bank to conduct a large-scale information request from all its existing customers. Rather, a bank may comply with the proposed regulation with respect to its current customers by determining their normal and expected transactions using available account data and monitoring their transactions for suspicious activities. However, depending on the nature of the risk associated with some customers and their transactions (for instance, transactions involving private banking customers), it may be necessary to fulfill all of the requirements of this regulation as if they were new customers.

Establishment of Know Your Customer Program (§ 21.22(c))

This section requires that each bank establish a Know Your Customer program by April 1, 2000. Additionally, this section requires that the Know Your Customer program be reduced to writing and approved by the board of directors of the bank, or a committee thereof, and the approval recorded in the official minutes of the board.

Contents of Know Your Customer Program (§ 21.22(d))

This section sets forth the specific requirements for the contents of the Know Your Customer program. As previously noted, the OCC believes that to impose a regulation that requires each bank to follow a pre-designed, standardized checklist would not be appropriate. The proposed regulation thus allows each bank to develop and delineate a system that will comprise the Know Your Customer program, consistent with the banking practices of the particular bank that, when followed by the bank, will effectively meet the requirements and goals of the regulation.

Section 21.22(d) reflects the OCC's recognition that each bank's Know Your Customer program may vary depending on the nature of the specific activity, the type of customers involved, the size of the transactions, and other factors that reflect the bank's assessment of the risk presented. In complying with this section, it may be beneficial for banks to classify customers into varying risk-based categories that the banks can use in determining the amount and type of information, documentation and monitoring that is appropriate. While the proposed regulation will provide banks with substantial flexibility in devising an appropriate Know Your Customer program, the OCC believes that all Know Your Customer programs should contain certain critical features, which are discussed below.

Documentation and Due Diligence

Paragraph (d)(1) of § 21.22 requires that the Know Your Customer program delineate acceptable documentation requirements and due diligence procedures the bank will follow in meeting the requirements of the proposed regulation. The delineation of this information in the Know Your Customer program will ensure that the same standards are applied throughout the bank and will inform auditors and examiners of the bank's established standards for review of customer information.

Minimum Steps to Take to Comply With the Know Your Customer Rule

Paragraph (d)(2) of § 21.22 sets forth the steps a bank needs to take in order to know its customers. These steps are discussed below.

Identify the customer. Paragraph (d)(2)(i) requires that the Know Your Customer program provide a system for determining the identity of new customers. If a bank has reasonable cause to believe that it lacks sufficient information to know the identity of an existing customer, paragraph (d)(2)(i) also requires that the program provide a system for determining the identity of that customer.

It is imperative that a bank establish, to its own satisfaction, that it is dealing with a legitimate customer, whether the customer is a natural person, corporation, or other business entity. The nature and extent of the identification process should be commensurate with the types of transactions anticipated by the customer and the risks associated with such transactions. If a bank is unable to establish the identity or legitimacy of the customer, sound practices require that the bank not open the account (or terminate the account if the bank lacks adequate information to know the identity of an existing customer and is unable to obtain the information).

The best identification documents for verifying the identity of prospective customers are the ones that are the most difficult to obtain illicitly and the most difficult to counterfeit. No single form of identification can be guaranteed to be genuine, however. Therefore, the identification process should be cumulative, obtaining enough information and documentation to assure the bank that it has adequately identified the prospective customer. For individual accounts, this might include, for instance, a photograph and signature of the individual. For corporate or business customers, the customer identification process could include the review of appropriate documentation that allows for a means to verify that the corporation or other business entity does exist and does engage in the business, as stated. All documentation reviewed, as well as verifications of the information contained therein, should be recorded and maintained by the bank.

Any practice of a bank that allows for the establishment of a customer relationship without face-to-face contact with bank personnel, such as banking by mail or Internet banking, poses difficulties in the identification of the prospective customer by use of the traditionally accepted practice of obtaining photographic identification. Even though photographic identification in such circumstances will be impractical, other accepted means of identifying a customer are still viable. In such circumstances, special care should

be given to verification of address and telephone number.

If a bank offers private banking services, it is important that the bank understand a customer's personal and business background, source of funds, and intended use of the private banking services. Typically, private banking customers are clients of financial advisors or make use of account vehicles such as personal investment companies, trusts, and personal mutual investment funds. The establishment of such accounts protects the legitimate confidentiality and financial privacy of the customers who use such accounts. However, banks need to identify properly the beneficial owners of such accounts in order to have an effective Know Your Customer program. Any needed confidentiality required by customers of a bank's private banking department can be addressed by the development of special protections to limit access to information that would generally reveal the beneficial owners of those accounts.

Introductions or referrals of prospective customers by established customers of the bank, while extremely valuable in providing background information about the prospective customer, cannot take the place of identification requirements that should be set forth in the bank's Know Your Customer program. Details regarding the introduction or referral should be documented so that the information obtained can be effectively used to assist in the verification of the prospective customer.

Determine the source of funds. Paragraph (d)(2)(ii) requires that the Know Your Customer program provide a system for determining the source of a customer's funds. The amount of information needed to do this can depend on the type of customer in question. As an example, if a retail banking customer maintains demand deposit accounts funded primarily from payroll deposits, it should be a relatively simple task to identify and document the source of funds as payroll deposits. On the other hand, a more detailed analysis, with a more extensive documentation process, would be required for high net worth customers with multiple deposits from a variety of sources. For these reasons, among others, it may be beneficial for banks to classify customers into varying categories, based on factors such as the types of accounts maintained, the types of transactions conducted, and the potential risk of illicit activities associated with such accounts and transactions. Banks could then develop procedures to obtain necessary information and documentation based on the risk assessment for the various categories or classes established by a bank.

Determine normal and expected transactions. Paragraph (d)(2)(iii) requires that the Know Your Customer program provide a system for determining a customer's normal and expected transactions involving the bank. Without this information, a bank is unable to identify suspicious transactions. A bank's understanding of a customer's normal and expected transactions should be based on information obtained both when an account is opened and during a reasonable period of time thereafter. It also should be based on normal transactions for similarly situated customers.

Monitor the account transactions. Paragraph (d)(2)(iv) requires that the Know Your Customer program provide a system for monitoring, on an ongoing basis, the transactions conducted by customers and identifying transactions that are inconsistent with the normal and expected transactions for particular customers or for customers in the same or similar categories or classes. The proposed regulation does not require that every transaction of every customer be reviewed. Rather, it requires that a bank develop a monitoring system that is appropriate for the risks presented by the accounts maintained at that bank.

In designing a monitoring system, a bank may choose to classify accounts into various categories based on factors such as the type and size of account, the types, number, and size of transactions conducted in the account, and the risk of illicit activity associated with the account. For certain classes or categories of accounts, it would be sufficient for an effective monitoring system to establish parameters for which the transactions within these accounts will normally occur. Rather than monitoring each transaction, an effective monitoring system could entail monitoring only for those transactions that exceed the established parameters for that particular class or category of accounts. For other categories or classes of accounts, such as private banking accounts, it may be necessary to monitor each significant transaction.

Determine if transaction should be reported. Once a transaction is identified as inconsistent with normal and expected transactions, paragraph (d)(2)(v) requires that a bank determine if the transaction warrants the filing of a Suspicious Activity Report. This is consistent with a bank's existing obligations under 12 CFR 21.11(c). In identifying reportable transactions, a bank should not conclude that every transaction that falls outside what is expected for a given customer should be reported. Rather, a bank should focus on patterns of inconsistent transactions and isolated transactions that present risk factors that warrant further review.

Compliance with Know Your Customer Program (§ 21.22(e))

This section sets forth the requirements a bank must follow to ensure that it is in compliance with its Know Your Customer program. The requirements include that a bank provide for and document a system of internal controls to ensure ongoing compliance, as well as provide for and document independent testing for compliance with the Know Your Customer program. Additionally, the bank must designate an individual responsible for coordinating and monitoring day-to-day compliance and provide for and document training to all appropriate personnel of the content and requirements of the Know Your Customer program.

Availability of Documentation (§ 21.22(f))

This section requires, for all accounts opened or maintained in the United States, that all information and documentation necessary to comply with the regulation be made available for examination and inspection, at a location specified by a OCC representative, within 48 hours of a request for such information and documentation. In instances where the information and documentation is at a location other than where the customer's account is maintained or the financial services are rendered, the bank must adopt, as part of its Know Your Customer program, specific procedures designed to ensure that the information and documentation is reviewed by personnel at the location where the customer's account is located or the financial services are rendered, and the bank should provide written evidence that the appropriate review of the information and documentation is being performed by the personnel at that location on a regular basis.

While issues arise on occasion concerning whether foreign laws permit a bank to disclose certain customer information, the OCC's experience is that the information typically already exists within the bank in the United States because the information is used by the relationship manager, who resides in the United States, as well as other components of the bank, to provide banking services to the customer. Moreover, in instances where

banks have raised foreign law disclosure issues, the banks, at the OCC's suggestion, have obtained from their customers waivers to any perceived prohibition to disclosure of the information and documentation. Thus, the OCC does not anticipate that foreign laws will preclude the production of information relating to accounts opened and maintained in the United States.

Comments Sought

The OCC invites comment on any aspect of the proposed regulation, and specifically seeks comment on the following issues:

1. Whether the proposed definition of ''customer'' is sufficient to include all persons who benefit from an account opened at a bank, such as persons who establish off-shore shell companies or entities or otherwise conduct their business through intermediaries.

2. Whether the proposed definition of ''customer'' is too broad and will unnecessarily include persons that pose a minimal Know Your Customer risk.

3. Whether a bank's Know Your Customer program should apply to a bank's counterparty relationships with respect to transactions in wholesale financial markets (e.g., sales or purchases involving foreign exchange or securities) and correspondent banking relationships.

4. Whether a different standard than that applicable to retail relationships would be more appropriate for wholesale and correspondent banking relationships, and, if such a distinction is appropriate, how the definition of ''customer'' can be distinguished between transactional counterparty customers, correspondents, and retail customers.

5. Whether the proposed regulation will create a competitive disadvantage with respect to other financial entities offering similar services that may not be subject to the similar regulations (citing, where possible, specific examples) and, if so, what could be done to mitigate the disadvantage consistent with the OCC's supervisory responsibilities.

6. Whether the actual or perceived invasion of personal privacy interests is outweighed by the additional compliance benefits anticipated by this proposal.

7. Whether there should be a minimum account size threshold below which the Know Your Customer requirements should be waived.

8. Whether credit card banks should be exempt from the regulation.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the OCC certifies that this proposal will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. Most banks, from small to large, already have policies and procedures aimed at collecting, retaining, and reviewing the types of information required by this proposal. Therefore, there should not be a significant economic impact from this proposal.

Paperwork Reduction Act

The OCC invites comment on:

(1) Whether the proposed collections of information contained in this notice of proposed rulemaking are necessary for the proper performance of the OCC's functions, including whether the information has practical utility;

(2) The accuracy of the OCC's estimate of the burden of the proposed information collection;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected;

(4) Ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology; and

(5) Estimates of capital or start-up costs and costs of operation, minutes, and purchase of services to provide information.

Recordkeepers are not required to respond to this collection of information unless it displays a currently valid OMB control number.

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1557–KYCP), Washington, D.C. 20503, with copies to Office of the Comptroller of the Currency, Communications Division, 250 E Street, SW, Attention: 1557–KYCP, Washington, D.C. 20219.

The proposed rule is not expected to significantly increase the ongoing annual paperwork burden for the recordkeepers because most of the ongoing burden is incurred and accounted for under other existing information collections. As discussed in the preamble to the proposed rule, banks already must report suspicious transactions, pursuant to 12 CFR 21.11. Therefore, they already must gather information about customers and monitor customer transactions as part of their usual and customary activities in order to comply with the suspicious activity reporting requirements. Moreover, the OCC has drafted the proposed regulation in a way that is designed to give banks as much flexibility as possible to design a system that is appropriate for each individual bank and generally has not proposed to require compliance with specific paperwork burdens.

The majority of the paperwork burden associated with the proposed rule is the one-time burden of developing a plan. In the normal course of business, most institutions likely already have sufficient information about their customers in their files and would only need to organize and review such information. Because each institution would design its own program in accordance with its own business practices, the OCC estimates that the burden of the proposed rule would vary considerably and may range, during the initial year, from 10 to 30 hours, with an average of 20 hours per recordkeeper.

The collection of information requirements in this proposed rule are found in 12 CFR 21.22(c) and 21.22(e)(3). This information is required to evidence compliance with the requirements that the Know Your Customer program has been developed and approved by a bank's board of directors (or committee thereof) and to identify the person(s) responsible for coordinating and monitoring compliance with the program. The likely respondents are national banks, District banks, and Federal branches and agencies of foreign banks licensed or chartered by the OCC.

Estimated average annual burden hours per recordkeeper: 20 hours for the first year, with an average over the first three years of 8 hours per year.

Estimated number of recordkeeper: 2,600.

Estimated total annual recordkeeping burden: 52,000 for the first year, with an average over the first three years of 20,800 hours per year.

Start-up costs: None.

Executive Order 12866

The Office of Management and Budget has concurred with the OCC's determination that this proposal is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Reform Act of 1995

The OCC has determined that this proposal will not result in expenditures by state, local, and tribal governments, or by the private sector, of $100 million

or more in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Reform Act of 1995. Most banks already have policies and procedures aimed at collecting, retaining and reviewing the types of information required by this proposal and, thus, this proposal should not result in substantial additional expenditures.

List of Subjects in 12 CFR Part 21

Currency, National banks, Reporting and recordkeeping requirements, Security measures.

Authority and Issuance

For the reasons set forth in the preamble, part 21 of chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 21—MINIMUM SECURITY DEVICES AND PROCEDURES, REPORTS OF SUSPICIOUS ACTIVITIES, AND BANK SECRECY ACT COMPLIANCE PROGRAM

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

Authority: 12 U.S.C. 93a, 1818, 1881–1884, and 3401–3422; 31 U.S.C. 5318.

2. A new § 21.22 is added to read as follows:

§ 21.22 Know Your Customer rules.

(a) *Purpose and scope*—(1) *Purpose.* The Know Your Customer rules require that national banks and Federal branches or agencies of foreign banks establish and regularly maintain procedures designed to determine the identity of their customers, as well as their customers' normal and expected transactions and sources of funds involving the bank. These procedures (referred to as the ''Know Your Customer'' program) are intended to: protect the reputation of the bank; facilitate the bank's compliance with all applicable statutes and regulations (including the Bank Secrecy Act and the suspicious activity reporting requirements of 12 CFR 21.11) and with safe and sound banking practices; and protect the bank from becoming a vehicle for or a victim of illegal activities perpetrated by its customers.

(2) *Scope.* In general, the Know Your Customer rules apply to all national banks as well as all Federal branches or agencies of foreign banks licensed or chartered by the OCC. However, the rules do not apply to credit card banks, bankers's banks, or other banks that operate solely to service the activities of their affiliates.

(b) *Definition of customer.* For the purposes of this section, customer means:

(1) Any person or entity who has an account involving the receipt or disbursal of funds with an institution covered by this section; and

(2) Any person or entity on behalf of whom an account is maintained.

(c) *Establishment of Know Your Customer program.* Each bank shall develop and provide for the continued administration of a Know Your Customer program by April 1, 2000. The Know Your Customer program shall be reduced to writing and approved by the board of directors (or a committee thereof) with the approval recorded in the official minutes of the board.

(d) *Contents of Know Your Customer program.* The Know Your Customer program may vary in complexity and scope according to categories or classes of customers established by the bank and the potential risk of illicit activities associated with those customers' accounts and transactions. Components of the program should include the following:

(1) Appropriate documentation requirements and due diligence procedures established by the bank to comply with this section; and

(2) A system for:

(i) Determining the identity of the bank's new customers and, if the bank has reasonable cause to believe that it lacks adequate information to know the identity of existing customers, determining the identity of those existing customers;

(ii) Determining the customer's sources of funds for transactions involving the bank;

(iii) Determining the particular customer's normal and expected transactions involving the bank;

(iv) Monitoring customer transactions and identifying transactions that are inconsistent with normal and expected transactions for that particular customer or for customers in the same or similar categories or classes, as established by the bank; and

(v) Determining if a transaction should be reported in accordance with the OCC's suspicious activity reporting regulations and, if so, reporting accordingly.

(e) *Compliance with Know Your Customer program.* The bank shall comply with its Know Your Customer program. To ensure compliance, the bank shall:

(1) Provide for and document a system of internal controls;

(2) Provide for and document independent testing for compliance to be conducted by bank personnel or by an outside party on a regular basis;

(3) Designate an individual or individuals responsible for coordinating and monitoring day-to-day compliance; and

(4) Provide for and document training to all appropriate personnel, on at least an annual basis, of the content and required procedures of the Know Your Customer program.

(f) *Availability of documentation.* For all accounts opened or maintained in the United States, each bank must ensure that all information and documentation sufficient to comply with the requirements of this section are available for examination and inspection, at a location specified by an OCC representative, within 48 hours of an OCC representative's request for such information and documentation. In instances where the information and documentation is maintained at a location other than where the customer's account is maintained or the financial services are rendered, the bank must include, as part of its Know Your Customer program, specific procedures designed to ensure that the information and documentation is reviewed on an ongoing basis by appropriate bank personnel in order to comply with this section.

Dated: October 17, 1998.

Julie L. Williams,

Acting Comptroller of the Currency.

[FR Doc. 98–32333 Filed 12–4–98; 8:45 am]

BILLING CODE 4810–33–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 326

RIN 3064–AC19

Minimum Security Devices and Procedures and Bank Secrecy Act Compliance

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FDIC is proposing to issue a regulation requiring insured nonmember banks to develop and maintain ''Know Your Customer'' programs. As proposed, the regulation would require each nonmember bank to develop a program designed to determine the identity of its customers; determine its customers' sources of funds; determine the normal and expected transactions of its customers; monitor account activity for transactions that are inconsistent with those normal

and expected transactions; and report any transactions of its customers that are determined to be suspicious, in accordance with the FDIC's existing suspicious activity reporting regulation. By requiring insured nonmember banks to determine the identity of their customers, as well as to obtain knowledge regarding the legitimate activities of their customers, the proposed regulation will reduce the likelihood that insured nonmember banks will become unwitting participants in illicit activities conducted or attempted by their customers. It also will level the playing field between institutions that already have adopted formal Know Your Customer programs and those that have not.

DATES: Comments must be received by March 8, 1999.

ADDRESSES: Comments should be directed to: Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, DC 20429. Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. In addition, comments may be sent by fax to (202) 898–3838, or by electronic mail to comments@FDIC.gov. Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW, Washington, D.C., between 9 a.m. and 4:30 p.m., on business days.

FOR FURTHER INFORMATION CONTACT: Carol A. Mesheske, Special Activities Section, Division of Supervision, (202) 898–6750, or Karen L. Main, Counsel, Legal Division (202) 898–8838.

SUPPLEMENTARY INFORMATION:

Background

The integrity of the financial sector depends on the ability of banks and other financial institutions to attract and retain legitimate funds from legitimate customers. Financial institutions are able to attract and retain the business of legitimate customers because of the quality and reliability of the services being rendered and, as important, the sound and highly respected reputation of the banking industry. Illicit activities, such as money laundering, fraud, and other transactions designed to assist criminals in their illegal ventures, pose a serious threat to the integrity of financial institutions. When transactions at financial institutions involving illicit funds are revealed, these transactions invariably damage the reputation of the financial institutions involved and, potentially, the entire financial sector. While it is impossible to identify every transaction at an institution that is potentially illegal or is being conducted to assist criminals in the movement of illegally derived funds, it is fundamental for safe and sound operations that financial institutions take reasonable measures to identify their customers, understand the legitimate transactions typically conducted by those customers, and, consequently, identify those transactions conducted by their customers that are unusual or suspicious in nature. By identifying and, when appropriate, reporting such transactions in accordance with existing suspicious activity reporting requirements, financial institutions are protecting their integrity and are assisting the efforts of the financial institution regulatory agencies and law enforcement authorities to combat illicit activities at such institutions.

One of the most effective means by which an insured nonmember bank can both protect itself from engaging in transactions designed to facilitate illicit activities and ensure compliance with applicable suspicious activity reporting requirements is for the nonmember bank to have adequate Know Your Customer policies and procedures. By knowing its customers, an insured nonmember bank is better able to fulfill its compliance responsibilities, including its Bank Secrecy Act and suspicious activity reporting requirements, 12 CFR 326.8 and 12 CFR part 353, respectively.

Recognizing that a Know Your Customer program for one nonmember bank will not necessarily be appropriate for another, the proposed regulation identifies only the basic components that the FDIC believes should be contained in any Know Your Customer program. In supplemental guidance to be provided at the time this regulation becomes final, the FDIC, in coordination with the other federal financial institution supervisory agencies, will provide further information about specific steps that institutions may consider taking as they implement their Know Your Customer programs. The FDIC believes that this approach strikes an appropriate balance that responds to requests for additional guidance in this area while preserving the flexibility for each insured nonmember bank to take steps appropriate for its customers.

Privacy Issues

The proposed regulation requires insured nonmember banks to gather information about customers that, if misused, could result in an invasion of a customer's privacy. Given the potential for abuse in this area, it is the FDIC's expectation that, in complying with the Know Your Customer regulation, a nonmember bank will obtain only that information that is necessary to comply with the regulation and will limit the use of this information to complying with the regulation. Insured nonmember banks need to safeguard and handle responsibly the information gathered in connection with complying with these obligations, and should integrate comprehensive privacy practices into their Know Your Customer programs.

Authority To Issue the Regulation

The proposed regulation is authorized pursuant to the FDIC's statutory authority under section 8(s)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1818(s)(1)), as amended by section 2596(a)(2) of the Crime Control Act of 1990 (Pub. L. 101–647), which requires the FDIC to issue regulations requiring banks under its supervision to establish and maintain internal procedures reasonably designed to ensure and monitor compliance with the Bank Secrecy Act. Effective Know Your Customer programs serve to facilitate compliance with the Bank Secrecy Act.

Proposal

The FDIC proposes to revise 12 CFR part 326 by adding a new subpart requiring insured nonmember banks to develop and implement Know Your Customer programs. Under the proposed regulation, the FDIC would expect each nonmember bank to design a program that is appropriate given its size and complexity, the nature and extent of its activities, its customer base and the levels of risk associated with its various customers and their transactions. The FDIC believes that this approach is preferable to a detailed regulation that imposes the same list of specific requirements on every bank regardless of its circumstances. The FDIC recognizes that a Know Your Customer requirement will impose additional burdens on some insured nonmember banks. Mindful of that fact, the FDIC is striving to impose only those requirements that are necessary to ensure that insured nonmember banks have in place adequate Know Your Customer programs.

Each of the other federal bank supervisory agencies is proposing to adopt substantially identical regulations covering state member and national banks, federally-chartered branches and agencies of foreign banks, savings associations, and credit unions. There also have been discussions with the

federal regulators of non-bank financial institutions, such as broker-dealers, concerning the need to propose similar rules governing the activities of these non-bank institutions.

Analysis of Subpart C

Section 326.9 Know Your Customer Compliance

Paragraph (a)—Purpose

The purposes of adopting a Know Your Customer program are to protect the reputation of the insured nonmember bank; to facilitate the insured nonmember bank's compliance with all applicable statutes and regulations (including the Bank Secrecy Act and the FDIC's suspicious activity reporting regulations) and with safe and sound banking practices; and to protect the insured nonmember bank from becoming a vehicle for, or a victim of, illegal activities perpetrated by its customers.

This subpart applies to all insured state nonmember banks as well as any insured, state-licensed branches of foreign banks.

Paragraph (b)—Definitions

The proposed regulation defines the term ''customer'' as any person or entity who has an account involving the receipt or disbursal of funds with an insured nonmember bank covered by this regulation and any person or entity on behalf of whom an account is maintained. Thus, for instance, if an account is opened on behalf of a third party, the nonmember bank will need to treat as a customer both the person or entity opening the account and the person or entity for whom the account is opened. A customer would include an accountholder, a beneficial owner of an account, or a borrower. A ''customer'' could include the beneficiary of a trust, an investment fund, a pension fund or a company whose assets are managed by an asset manager; a controlling shareholder of a closely held corporation; or the grantor of a trust established in an off-shore jurisdiction. The term ''customer'' does not include recipients of services for which the receipt or disbursal of customer funds is incidental, for instance, safe deposit box rentals.

The proposed regulation does not differentiate between current customers and new customers. The effectiveness of an insured nonmember bank's Know Your Customer program would be greatly reduced if all customer accounts in existence prior to the effective date of the regulation were excluded from its scope. However, the FDIC does not believe that it is practicable for a nonmember bank to conduct a large-scale information request from all its existing customers. Rather, a nonmember bank may comply with the proposed regulation with respect to its current customers by determining their normal and expected transactions, using available account data, and monitoring their transactions for suspicious activities. However, depending on the nature of the risk associated with some customers and their transactions (for instance, transactions involving private banking customers), it may be necessary to fulfill all of the requirements of this regulation as if they were new customers.

Paragraph (c)—Establishment of Know Your Customer Program

This paragraph requires that each insured nonmember bank establish a Know Your Customer program by April 1, 2000. Additionally, this paragraph requires that the Know Your Customer program be reduced to writing and approved by the board of directors of the nonmember bank, or a committee thereof, and the approval recorded in the official minutes of the board.

Paragraph (d)—Contents of Know Your Customer Program

This paragraph sets forth the specific requirements for the contents of the Know Your Customer program. The FDIC recognizes that insured nonmember banks vary considerably in the way in which they conduct their business on a day-to-day basis. Therefore, the FDIC believes that to impose a regulation that simply requires each insured nonmember bank to follow a pre-designed, standardized checklist would not be appropriate. The proposed regulation thus allows each nonmember bank to develop and delineate a system that will comprise the Know Your Customer program, consistent with the banking practices of the particular bank that, when followed by the nonmember bank, will effectively meet the requirements and goals of the regulation.

Section 326.9(d) reflects the FDIC's recognition that each insured nonmember bank's Know Your Customer program may vary depending on the nature of the specific activity, the type of customers involved, the size of the transactions, and other factors that reflect the nonmember bank's assessment of the risk presented. In complying with this section, it may be beneficial for insured nonmember banks to classify customers into varying risk-based categories that the insured nonmember banks can use in determining the amount and type of information, documentation and monitoring that is appropriate. While the proposed regulation will provide nonmember banks with substantial flexibility in devising an appropriate Know Your Customer program, the FDIC believes that all Know Your Customer programs should contain certain critical features, which are discussed below.

Documentation and due diligence. Paragraph (d)(1) of § 326.9 requires that the Know Your Customer program delineate acceptable documentation requirements and due diligence procedures the insured nonmember bank will follow in meeting the requirements of the proposed regulation. The delineation of this information in the Know Your Customer program will ensure that the same standards are applied throughout the nonmember bank and will inform auditors and examiners of the nonmember bank's established standards for review of customer information.

Minimum steps to take to comply with the Know Your Customer rule. Paragraph (d)(2) of § 326.9 sets forth the steps an insured nonmember bank needs to take in order to know its customers. The proposed regulation requires that, rather than following a ''checklist'' approach, an insured nonmember bank may develop a ''system'' designed to meet the basic requirements of the regulation. The system approach allows each insured nonmember bank to design its own program, in accordance with its own business practices, that will best suit the nonmember bank. While this places some burden on the nonmember bank to develop the specifics of the Know Your Customer program, such an approach recognizes that each insured nonmember bank conducts business in accordance with its own policies, procedures, goals and objectives. The Know Your Customer program, in order to be the most effective, must be developed and implemented with the nonmember bank's regular and ordinary business practices in mind. The FDIC believes that all Know Your Customer programs should contain certain critical features, which are set forth below.

Identify the customer. Paragraph (d)(2)(i) requires that the Know Your Customer program provide a system for determining the true identity of prospective customers. If an insured nonmember bank has reasonable cause to believe that it lacks sufficient information to know the identity of an existing customer, paragraph (d)(4)(ii)(A) also requires that the program provide a system for

determining the identity of that customer.

It is imperative that an insured nonmember bank establish, to its own satisfaction, that it is dealing with a legitimate customer, whether the customer is a natural person, corporation, or other business entity. The nature and extent of the identification process should be commensurate with the types of transactions anticipated by the customer and the risks associated with such transactions. If a prospective customer refuses to provide any of the requested information, sound practices would require that the nonmember bank not open the account. Similarly, if additional or follow-up information is not forthcoming from an established customer, sound practices would require that consideration be given to terminating the account relationship.

The best identification documents for verifying the identity of prospective customers are the ones that are the most difficult to obtain illicitly and the most difficult to counterfeit. No single form of identification can be guaranteed to be genuine, however. Therefore, the identification process should be cumulative, obtaining enough information and documentation to assure the insured nonmember bank that it has adequately identified the prospective customer. For individual accounts, this might include, for instance, a document containing a photograph and signature of the individual. For corporate or business customers, the customer identification process could include the review of appropriate documentation that allows for a means to verify that the corporation or other business entity does exist and does engage in the business, as stated. All documentation reviewed, as well as verifications of the information contained therein, should be recorded and maintained by the nonmember bank.

Any practice of an insured nonmember bank that allows for the establishment of a customer relationship without face-to-face contact with bank personnel, such as banking by mail or Internet banking, poses difficulties in the identification of the prospective customer by use of the traditionally accepted practice of obtaining identification documentation, to include photographic identification. Even though photographic identification in such circumstances will be impractical, other accepted means of identifying a customer are still viable. In such circumstances, special care should be given to verification of address and telephone number. Moreover, insured nonmember banks should consider using commercially available data to compare items such as name with date of birth and social security number.

If an insured nonmember bank offers private banking services, it is important that the nonmember bank understand a customer's personal and business background, source of funds, and intended use of the private banking services. Typically, private banking customers are clients of financial advisors or make use of account vehicles such as personal investment companies, trusts, and personal mutual investment funds. The establishment of such accounts serves the stated purposes of protecting the legitimate confidentiality and financial privacy of the customers who use such accounts. However, the need to identify properly the beneficial owners of such accounts, through an effective Know Your Customer program, is necessary to the continued safe and sound operation of the insured nonmember bank. Any needed confidentiality required by customers of an insured nonmember bank's private banking department can be addressed by the development of special protections to limit access to information that would generally reveal the beneficial owners of those accounts.

Introductions or referrals of prospective customers by established customers of the insured nonmember bank, while extremely valuable in providing background information about the prospective customer, cannot take the place of identification requirements that should be set forth in the nonmember bank's Know Your Customer program. Details regarding the introduction or referral should be documented so that the information obtained can be effectively used to assist in the verification of the prospective customer.

The extent of the information regarding the customer that may be necessary to fulfill the nonmember bank's Know Your Customer obligations should depend on a risk-based assessment of the customer and the transactions that are expected to occur, and should be addressed within the insured nonmember bank's Know Your Customer program.

Determine the source of funds. Paragraph (d)(2)(ii) requires that the Know Your Customer program provide a system for determining the source of a customer's funds. The amount of information needed to do this can depend on the type of customer in question. As an example, if a retail banking customer maintains demand deposit accounts funded primarily from payroll deposits, it should be a relatively simple task to identify and document the source of funds as payroll deposits. On the other hand, a more detailed analysis, with a more extensive documentation process, would be required for high net worth customers with multiple deposits from a variety of sources. For these reasons, among others, it may be beneficial for insured nonmember banks to classify customers into varying categories, based on factors such as the types of accounts maintained, the types of transactions conducted, and the potential risk of illicit activities associated with such accounts and transactions. An insured nonmember bank could then develop procedures to obtain necessary information and documentation based on the risk assessment for the various categories or classes established by the nonmember bank.

Determine normal and expected transactions. Paragraph (d)(2)(iii) requires that the Know Your Customer program provide a system for determining a customer's normal and expected transactions involving the insured nonmember bank. A nonmember bank's understanding of a customer's normal and expected transactions should be based on information obtained both when an account is opened and during a reasonable period of time thereafter. It also should be based on normal transactions for similarly situated customers. Without this information, an insured nonmember bank is unable to identify suspicious transactions.

Monitor the account transactions. Paragraph (d)(2)(iv) requires that the Know Your Customer program provide a system for monitoring, on an ongoing basis, the transactions conducted by customers to identify transactions that are inconsistent with the normal and expected transactions for particular customers or for customers in the same or similar categories or classes. The proposed regulation does not require that every transaction of every customer be reviewed. Rather, it requires that an insured nonmember bank develop a monitoring system that is commensurate with the risks presented by the accounts maintained at that bank.

In designing a monitoring system, an insured nonmember bank may choose to classify accounts into various categories based on factors such as the type and size of account, the types, number, and size of transactions conducted in the account, and the risk of illicit activity associated with the account. For certain classes or categories of accounts, it would be sufficient for an effective monitoring system to establish parameters for which the transactions

within these accounts will normally occur. Rather than monitoring each transaction, an effective monitoring system could entail monitoring only for those transactions that exceed the established parameters for that particular class or category of accounts. For other categories or classes of accounts, such as private banking accounts, it may be necessary to monitor each significant transaction.

Determine if transaction should be reported. Once a transaction is identified as inconsistent with normal and expected transactions, paragraph (d)(2)(v) requires that an insured nonmember bank determine if the transaction warrants the filing of a Suspicious Activity Report. This is consistent with an insured nonmember bank's existing obligations under 12 CFR 353.3(a). In identifying reportable transactions, an insured nonmember bank should not conclude that every transaction that falls outside what is expected for a given customer should be reported. Rather, a nonmember bank should focus on patterns of inconsistent transactions and isolated transactions that present risk factors that warrant further review.

Paragraph (e)—Compliance With Know Your Customer Program

This paragraph sets forth the requirements an insured nonmember bank must follow to ensure that it is in compliance with its Know Your Customer program. The requirements include that an insured nonmember bank provide for and document a system of internal controls to ensure ongoing compliance, as well as provide for and document independent testing for compliance with the Know Your Customer program. Additionally, the nonmember bank must designate an individual responsible for coordinating and monitoring day-to-day compliance and provide for and document training to all appropriate personnel of the content and requirements of the Know Your Customer program.

Paragraph (f)—Availability of Documentation

This paragraph requires, for all accounts opened or maintained in the United States, that all information and documentation necessary to comply with the regulations be made available for examination and inspection, at a location specified by an FDIC representative, within 48 hours of a request for such information and documentation. In instances where the information and documentation is at a location other than where the customer's account is maintained or the financial services are rendered, the insured nonmember bank must adopt, as part of its Know Your Customer program, specific procedures designed to ensure that the information and documentation is reviewed on an ongoing basis by appropriate personnel. The nonmember bank should maintain written evidence that the appropriate review is being performed on a regular basis.

While issues arise on occasion concerning documentation on accounts domiciled in the United States by foreign accountholders, the FDIC believes that the information typically already exists within the insured nonmember bank in the United States because the information is used by the relationship manager, who resides in the United States, as well as other components of the nonmember bank to provide banking services to the customer.

Comments Sought

The FDIC invites comment on any aspect of the rule, and specifically seeks comment on the following issues:

1. Whether the proposed definition of ''customer'' is sufficient to include all persons who benefit from an account opened at an insured nonmember bank such as persons who establish off-shore shell companies or entities or otherwise conduct their business through intermediaries.

2. Whether the proposed definition of ''customer'' is too broad and will unnecessarily include persons that pose a minimal Know Your Customer risk.

3. Whether an insured nonmember bank's Know Your Customer program should apply to a nonmember bank's counterparty relationships with respect to transactions in wholesale financial markets (e.g., sales or purchases involving foreign exchange or securities) and correspondent banking relationships. If so, would a different standard than that applicable to retail relationships be more appropriate for wholesale and correspondent banking relationships? If such a distinction is appropriate, is the proposed definition of ''customer'' sufficient?

4. Whether the benefits of implementing Know Your Customer requirements outweigh the costs involved.

5. Whether the proposed regulation will create a competitive disadvantage with respect to other financial entities offering similar services that may not be subject to similar regulations (citing, where possible, specific examples) and, if so, what could be done to mitigate the disadvantage consistent with the FDIC's supervisory responsibilities.

6. Whether the actual or perceived invasion of personal privacy interests is outweighed by the additional compliance benefits anticipated by this proposal.

7. Whether there should be a minimum account size threshold below which the Know Your Customer requirements should be waived.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, the FDIC must either provide an Initial Regulatory Flexibility Analysis (IRFA) with this proposed rule, or certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule is designed to be flexible so that each insured nonmember bank can design a Know Your Customer program appropriate for its circumstances. While advantageous to insured nonmember banks, this flexibility makes it difficult to predict the magnitude of the economic impact of the proposed rule on insured nonmember banks. The FDIC cannot, at this time, determine whether the proposed rule would have a significant economic impact on a substantial number of small entities. The FDIC, therefore, includes this IRFA.

A. Reasons For and Objectives of the Proposed Rule.

The proposed Know Your Customer rule is designed to deter and detect financial crimes, such as money laundering, tax evasion, and fraud. Financial crimes conducted at or through financial institutions, even where financial institutions are not parties to the transactions, can damage the reputations of the institutions involved, and possibly of the entire banking industry. Under current law, financial institutions are required to report suspicious activities to law enforcement authorities, but are not required to specifically search for suspicious activities. As a result, suspicious activities may go unreported, and illegal activity may go undetected. Know Your Customer programs would better enable financial institutions to alert law enforcement authorities to potential criminal conduct and help deter criminal conduct in the banking industry.

The FDIC has two primary objectives for this proposed rulemaking: (1) increasing insured nonmember banks' detection and reporting of suspicious customer activities; and, (2) deterring financial crimes at insured nonmember banks.

The proposed rule would apply to large and small insured nonmember

banks. Small nonmember banks are generally defined, for Regulatory Flexibility Act purposes, as those with assets of $100 million or less. This proposed rule would apply to approximately 3,950 small insured nonmember banks.

B. Requirements of the Proposed Rule.

The proposed rule would require insured nonmember banks to identify their customers, determine their customers' normal and expected transactions, determine their customers' sources of funds, monitor transactions to find those that are not normal and expected, and, for transactions that are not normal and expected, identify which are suspicious. Insured nonmember banks are required to report any suspicious transactions under current law, and this proposed rule would have no additional reporting requirements.

The impact of the proposed regulation on a nonmember bank's resources, and the skills necessary to comply with it, will vary from one nonmember bank to another because the proposed regulation is designed to take into account each bank's size and resources. Because each nonmember bank would be able to design an individualized Know Your Customer program, it is difficult to specify the type of professional skills necessary for preparing any required records or reports. Large insured nonmember banks may be more likely to use computerized Know Your Customer programs, and in that event would be more likely to need professional computer skills. Small nonmember banks that choose to automate their Know Your Customer programs would need professional computer skills.

Know Your Customer monitoring would be similar to monitoring that insured nonmember banks already do. For example, insured nonmember banks monitor customer transactions to ensure that cash transactions exceeding $10,000 are reported under the Bank Secrecy Act, to ensure that customers do not overdraw their accounts, and to ensure that loan payments are accurate and timely. Thus, Know Your Customer monitoring would rely, at least in part, on computer and other skills that insured nonmember bank personnel already have and regularly use.

C. Significant Alternatives

1. No Know Your Customer Requirements

The FDIC considered recommending Know Your Customer procedures rather than proposing regulatory requirements. The FDIC decided to propose this rulemaking, however, because of the risks that insured nonmember banks face from customers who attempt illegal activities. Illegal activities would harm a nonmember bank's reputation and that of the entire banking industry. Requiring Know Your Customer programs significantly reduces the likelihood that some insured nonmember banks would not establish or adhere to such programs. In addition, because other federal banking agencies are proposing Know Your Customer rules, the FDIC believes that criminals would quickly move their illegal funds transfers into insured nonmember banks without Know Your Customer programs, thus increasing those banks' exposure to illegal activity.

Moreover, recommending rather than requiring Know Your Customer programs would allow customers to simply refuse to answer appropriate questions about their identities or transactions. If Know Your Customer programs are required, insured nonmember banks can more easily collect the necessary information because customers cannot turn readily to another financial institution free of such requirements.

For these reasons, merely recommending Know Your Customer programs would interfere with the FDIC's goals of increasing insured nonmember banks' detection and reporting of suspicious customer activities, and deterring financial crimes at insured nonmember banks.

2. Exemption for Small Nonmember Banks

The FDIC considered exempting small nonmember banks from Know Your Customer requirements. However, this alternative has the disadvantage of possibly creating a haven for criminal activity. It is likely that criminals would concentrate their activity at those nonmember banks not subject to any Know Your Customer requirements. An exemption for small insured nonmember banks would conflict with the FDIC's goals of increasing insured nonmember banks' detection and reporting of suspicious customer activities and deterring financial crimes at insured nonmember banks.

3. Flexible Know Your Customer Requirements

The FDIC is proposing to require that all insured nonmember banks establish and follow Know Your Customer programs, but the proposal will allow each nonmember bank to develop a program appropriate for its circumstances, including but not limited to its size and resources. This approach is preferable to the first two alternatives because it does not allow criminals to choose an insured nonmember bank without Know Your Customer requirements to conduct illegal activities. A flexible alternative also avoids requirements beyond the means of small nonmember banks. Small nonmember banks could use simpler, less costly, and less burdensome programs than larger insured nonmember banks.

D. Other Matters

The FDIC has the statutory authority to promulgate this proposed regulation. There are no federal rules that duplicate, overlap, or conflict with this proposed rule.

The FDIC encourages comment on all aspects of this IRFA, including comments on any significant economic impact the proposed rule would have on small entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) the FDIC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. A collection of information contained in this rule and described below has been submitted to OMB for review. Comments on the collection of information should be sent to the desk officer for the FDIC: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503. Copies of comments should also be sent to: Steven F. Hanft, FDIC Clearance Officer, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429, (202) 898–3907. Comments may be hand-delivered to the guard station at the rear of the 17th Street building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m. [Fax number (202) 898–3838; Internet address: COMMENTS@FDIC.GOV]. For further information on the Paperwork Reduction Act aspect of this rule, contact Steven F. Hanft at the above address. OMB will make a decision concerning the change in the information collection between 30 and 60 days after the publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of this publication. Unless the FDIC publishes a notice to the contrary, the public may assume that the change in the collection

was approved within 60 days of this publication.

Comment is solicited on: (i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) The quality, utility, and clarity of the information to be collected; and

(iv) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title of the collection: The proposed rule will modify an information collection previously approved by OMB titled ''Procedures for Monitoring Bank Secrecy Act Compliance'' under OMB control number 3064–0087.

Summary of the change to the collection: The proposed rule will modify the collection by adding a requirement that each bank develop a written ''Know Your Customer'' program.

Need and Use of the information: Banks will use the Know Your Customer program to assure that they do not become unwitting participants in illicit activities conducted or attempted by their customers. The FDIC will use the information kept to ensure and monitor compliance with the Bank Secrecy Act.

Respondents: State nonmember banks (approximately 6,000).

Estimated annual burden: The majority of the paperwork burden associated with the proposed rule is the one-time cost of developing a plan and implementing written policies and procedures which will occur in the first year of the rule's application to a covered bank. In the normal course of business, most institutions likely already have sufficient information about their customers in their files and would only need to organize and review such information. The FDIC estimates that there will be 6,000 recordkeepers in the first year. In subsequent years, the recordkeepers will consist of newly-chartered institutions subject to the rule. The proposed rule is not expected to significantly increase the ongoing annual burden for the recordkeepers because most of the ongoing burden is incurred in the normal course of their business activities and or accounted for under other existing information collections including their fraud prevention procedures, their monitoring of transactions for reporting on the Department of the Treasury's Currency Transaction Reports and as part of their procedures to detect violations or suspicious activity reported on the Suspicious Activity Report. Because the records would be maintained at the subject organizations and are not provided to the Board, no issue of confidentiality under the Freedom of Information Act arises.

Frequency of response: Occasional.

Number of responses: 6,000.

Number of hours to prepare a response: 10—30 hours, with an average of 20 hours.

Total annual burden: 120,000.

List of Subjects in 12 CFR Part 326

Banks, banking, Bank robbery, Bank Secrecy Act, Crime, Currency, Reporting and recordkeeping requirements, Security measures.

Authority and Issuance

For the reasons set forth in the preamble, part 326 of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 326—MINIMUM SECURITY DEVICES AND PROCEDURES AND BANK SECRECY ACT COMPLIANCE

1. The authority citation for part 326 continues to read as follows:

Authority: 12 U.S.C. 1813, 1815, 1817, 1818, 1819[Tenth], 1881–1883; 31 U.S.C. 5311–5324.

2. A new subpart C is added to read as follows:

Subpart C—Know Your Customer Compliance

§ 326.9 Know Your Customer rule.

(a) *Purpose.* This subpart requires that all insured nonmember banks as defined in 12 CFR 326.1(a) establish and regularly maintain procedures designed to determine the identity of their customers, as well as their customers' normal and expected transactions and sources of funds involving the nonmember bank. These procedures (referred to as the ''Know Your Customer'' program) are intended to: protect the reputation of the nonmember bank; facilitate the nonmember bank's compliance with all applicable statutes and regulations (including the Bank Secrecy Act and the suspicious activity reporting requirements of 12 CFR 353.3) and with safe and sound banking practices; and protect the insured nonmember bank from becoming a vehicle for or a victim of illegal activities perpetrated by its customers.

(b) *Definition of customer.* For the purposes of this section, customer means:

(1) Any person or entity who has an account with an insured nonmember bank covered by this subpart involving the receipt or disbursal of funds; and

(2) Any person or entity on behalf of whom an account is maintained.

(c) *Establishment of Know Your Customer program.* Each insured nonmember bank shall develop and provide for the continued administration of a Know Your Customer program by April 1, 2000. The Know Your Customer program shall be reduced to writing and approved by the board of directors (or a committee thereof) with the approval recorded in the official minutes of the board.

(d) *Contents of Know Your Customer program.* The Know Your Customer program may vary in complexity and scope according to categories or classes of customers established by the nonmember bank and the potential risk of illicit activities associated with those customers' accounts and transactions.

(1) Appropriate documentation requirements and due diligence procedures established by the insured nonmember bank to comply with this section.

(2) A system for:

(i) Determining the identity of the insured nonmember bank's new customers and, if the nonmember bank has reasonable cause to believe that it lacks adequate information to know the identity of existing customers, determining the identity of those existing customers;

(ii) Determining the customer's sources of funds for transactions involving the insured nonmember bank;

(iii) Determining the particular customer's normal and expected transactions involving the insured nonmember bank;

(iv) Monitoring customer transactions and identifying transactions that are inconsistent with normal and expected transactions for that particular customer or for customers in the same or similar categories or classes, as established by the insured nonmember bank; and

(v) Determining if a transaction should be reported in accordance with the FDIC's suspicious activity reporting regulations and, if so, reporting accordingly.

(e) *Compliance with Know Your Customer program.* The insured nonmember bank shall comply with its Know Your Customer program. To ensure compliance, the nonmember bank shall:

(1) Provide for and document a system of internal controls;

(2) Provide for and document independent testing for compliance to be conducted by bank personnel or by an outside party on a regular basis;

(3) Designate an individual or individuals as responsible for coordinating and monitoring day-to-day compliance; and

(4) Provide for and document training to all appropriate personnel, on at least an annual basis, of the content and required procedures of the Know Your Customer program.

(f) *Availability of documentation.* For all accounts opened or maintained in the United States, each insured nonmember bank must ensure that all information and documentation sufficient to comply with the requirements of this section are available for examination and inspection, at a location specified by an FDIC representative, within 48 hours of an FDIC representative's request for such information and documentation. In instances where the information and documentation is maintained at a location other than where the customer's account is maintained or the financial services are rendered, the insured nonmember bank must include, as part of its Know Your Customer program, specific procedures designed to ensure that the information and documentation is reviewed on an ongoing basis by appropriate bank personnel in order to comply with this subpart.

By order of the Board of Directors.

Dated at Washington, D.C. this 27th day of October, 1998.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 98–32334 Filed 12–4–98; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563

[No. 98–114]

RIN 1550–AB15

Know Your Customer

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) is proposing to issue a regulation requiring savings associations to develop and maintain Know Your Customer programs to deter and detect financial crimes. The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency are proposing substantially similar rules in separately published notices. The proposed regulation would reduce the likelihood that savings associations will become unwitting participants in any customer's illicit activities by requiring savings associations to determine the true identities and legitimate activities of their customers. The proposal would require each savings association to determine the identity of its customers, to determine normal and expected transactions for its customers, to determine its customers' sources of funds, to identify transactions that are not normal or expected transactions for the customer, and to report suspicious transactions under existing suspicious activity reporting requirements. The proposal's flexible approach would allow each savings association to design a Know Your Customer program suitable for its own circumstances.

DATES: Comments must be received by March 8, 1999.

ADDRESSES: Send comments to Manager, Dissemination Branch, Information Management and Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 98–114. Hand deliver comments to Public Reference Room, 1700 G Street, NW., lower level, from 9:00 A.M. to 5:00 P.M. on business days. Send facsimile transmissions to FAX Number (202) 906–7755 or (202) 906–6956 (if the comment is over 25 pages). Send e-mails to public.info@ots.treas.gov and include your name and telephone number. Interested persons may inspect comments at 1700 G Street, NW., from 9:00 A.M. until 4:00 P.M. on business days.

FOR FURTHER INFORMATION CONTACT: Larry A. Clark, Senior Manager, Compliance and Trust Programs, Compliance Policy, (202) 906–5628, Gary C. Jackson, Analyst, Compliance Policy, (202) 906–5653, Christine Harrington, Counsel (Banking and Finance), (202) 906–7957, or Karen Osterloh, Assistant Chief Counsel, (202) 906–6639, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

The financial sector's integrity depends on depository institutions' ability to attract and retain legitimate funds from law abiding customers. Depository institutions' ability to do so rests on the quality and the reliability of their services and on their sound reputation within the financial sector. Illicit financial activities, such as money laundering and fraud, pose a serious threat to financial institutions' integrity. Illicit funds transactions can damage the reputations of the involved financial institution, may subject the institution to criminal liability,[1] and may ultimately damage the reputation of the entire financial sector. While it is impossible to identify every transaction that is illegal or that assists criminals in moving illegally derived funds, financial institutions must take every reasonable step to detect such activity. When institutions identify their customers and determine what transactions are normal and expected for these customers, they are able to monitor transactions to identify unusual or suspicious transactions. By identifying and reporting unusual or suspicious transactions, financial institutions protect their integrity and assist the Federal banking agencies and law enforcement authorities in thwarting illicit activities.

The proposed regulation would implement 12 U.S.C. 1818(s). This statute requires the Federal banking agencies to prescribe regulations requiring depository institutions to establish and maintain procedures reasonably designed to ensure and monitor compliance with the Currency and Foreign Transaction Reporting Act (31 U.S.C. 5311 *et seq.*) Effective Know Your Customer programs should facilitate compliance with the Currency and Foreign Transaction Reporting Act and the regulations issued thereunder (31 CFR 103.11 *et seq.*) (collectively referred to as the Bank Secrecy Act).

Accordingly, OTS is proposing to issue rules requiring savings associations to develop and maintain Know Your Customer programs to detect and deter financial crimes. The Federal Reserve Board, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation are also proposing similar Know Your Customer regulations. OTS believes that similar rules applicable to different types of financial institutions will prevent competitive disparities between industries. OTS's proposal uses the plain language drafting techniques described in President Clinton's Memorandum on Plain Language in Government Writing (June 1, 1998), Vice President Gore's Memorandum Implementing the Presidential

[1] *See* 18 U.S.C. 1956 and 1957.

Memorandum on Plain Language (July 20, 1998), and the **Federal Register** Document Drafting Handbook.

The Federal banking agencies' position regarding the importance of a Know Your Customer program is consistent with that of other countries, as evidenced by the pronouncements of several international organizations.[2] Numerous countries have supported Know Your Customer programs and mandatory suspicious transaction reporting as the best means of protecting the financial sector. Criminal elements tend to gravitate towards financial institutions that operate within poorly regulated and poorly supervised jurisdictions. Know Your Customer programs work to stifle transactions involving illegally derived funds.

OTS recognizes that the proposed Know Your Customer requirements would impose additional burdens on some institutions. Consequently, OTS has proposed only the minimal requirements necessary to ensure that savings associations have adequate programs. Moreover, the proposed regulation is designed to be flexible so that savings associations can create Know Your Customer programs appropriate for their circumstances. In addition, the Federal banking agencies intend to publish interpretive guidance on Know Your Customer issuesat the same time as the regulations become final. This guidance, coupled with a flexible regulation, will aid savings associations in complying with the regulations.

Section-by-Section Analysis

OTS proposes to add a new regulation at 12 CFR 563.178 that would require every savings association to develop and implement a Know Your Customer program. The proposed rule describes the basic requirements of a Know Your Customer program, but does not set forth specific mandates in a checklist style. Rather, the proposal would give each savings association the flexibility to design a Know Your Customer program that is appropriate for its size, the nature and complexity of its operations, and its risk of illicit activity. The proposed rule is summarized below.

[2] *See* the Basle Committee on Banking Regulations and Supervisory Practices' December 1988 ''Statement on the Prevention of Criminal Use of the Banking System for the Purpose of Money Laundering,'' as well as the Committee's April 1997 ''Core Principles for Effective Banking Supervision;'' the 1988 United Nations Vienna Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; the 1990 Council of Europe Convention; and the Financial Action Task Force Forty Recommendations, issued in 1989 and amended in 1996.

Section 563.178(a) Who Must Establish a Know Your Customer Program?

Proposed paragraph (a) would require each savings association to establish and comply with a written Know Your Customer program. The savings association's board of directors or a committee of the board would be required to approve the program and record the approval in the official board minutes. These requirements would ensure that the same standards are applied throughout the savings association and would inform auditors and examiners of the program's requirements.

OTS intends to allow savings associations a sufficient time after publication of a final rule to establish Know Your Customer programs. OTS proposes to make the final Know Your Customer rule effective on April 1, 2000. In this way, savings associations will have a sufficient period to establish and implement their Know Your Customer programs.

Section 563.178(b) Why Must I Establish a Know Your Customer Program?

Paragraph (b) of the proposed rule would explain why a savings association must establish a Know Your Customer program. Such programs serve several purposes: protecting the savings association's reputation; facilitating its compliance with the Bank Secrecy Act, the OTS's suspicious activity reporting regulations, and safe and sound practices; and protecting the savings association from becoming a vehicle for, or a victim of, illegal activities by its customers.

Section 563.178(c) Who Is My Customer?

The proposed rule defines ''customer'' to include any person or entity who has an account with a savings association that involves the receipt or disbursal of funds, and any person or entity on behalf of whom an account is maintained. The term includes direct and indirect beneficiaries of the account when the activity in the account involves the receipt or disbursal of funds. A ''customer'' would include an accountholder, a beneficial owner of an account, or a borrower. A ''customer'' could include the beneficiary of a trust, an investment fund, a pension fund or a company whose assets are managed by an asset manager; a controlling shareholder of a closely held corporation; or the grantor of a trust established in an off-shore jurisdiction. The term ''customer'' does not include recipients of services for which the receipt or disbursal of customer funds is incidental, such as rental of safe deposit boxes.

The proposed definition would include both existing and new customers. The effectiveness of a Know Your Customer program would be greatly reduced if all customer accounts in existence prior to the effective date of the regulations were excluded from its scope. However, the OTS does not believe that it is practicable for a savings association to conduct a large-scale information request from all its existing customers. Rather, a savings association could comply with the proposed regulation by determining its current customers' normal and expected transactions using available account data, and monitoring their transactions for suspicious activities. However, if existing customers and their transactions present unusual risk of illegal activity (for instance, transactions involving private banking customers), it may be necessary to fulfill all of the requirements of this regulation as if they were new customers.

Section 563.178(d) What Transactions Are Covered Under This Section?

The regulation would define ''transaction'' to include any transaction by a customer that is conducted at a savings association's facilities or that involves the savings association, regardless of where the transaction is conducted.

Section 563.178(e) What Must My Know Your Customer Program Contain?

Proposed paragraph (e) sets forth the basic requirements for Know Your Customer programs. Savings associations vary considerably in how they conduct their day-to-day business. OTS believes that requiring each savings association to follow a standard checklist would be of little value. Accordingly, the proposed regulation would allow each savings association to develop an individualized Know Your Customer program. Such individualized programs would more appropriately reflect the size and complexity of the savings association, the types of customers it serves, the nature and extent of its customers' activities, and its risks of illicit activity. In particular, proposed paragraph (e) would allow a savings association to develop ''customer profiles'' for classifying customers into risk-based categories to determine the information and monitoring that is appropriate for those customers and to determine when customers' transactions may be suspicious.

While the proposed regulation would provide savings associations with substantial flexibility to devise individualized Know Your Customer programs, all Know Your Customer programs must contain certain critical features. First, proposed § 563.178(e)(1) would require each savings association to determine the identities of its prospective customers. For existing customers, a savings association also would be required to determine their identity if it has reason to believe that it lacks adequate information to know their identity.

Each savings association would need to establish, to its own satisfaction, that it is dealing with a legitimate person or entity, and must verify its customer's identity. The nature and extent of the identification process should be commensurate with the anticipated transactions and the risks of illegal activity associated with such transactions.

If a prospective customer refuses to provide any requested information, sound practices would require that the savings association not establish the customer relationship. Similarly, if an established customer refuses to provide requested information, sound practices would require the savings association to consider terminating the relationship.

The best documents for verifying the identity of a prospective customer are the ones that are the most difficult to obtain illicitly and the most difficult to counterfeit. Because no single form of identification can be guaranteed to be genuine, a savings association should use a cumulative identification process and should obtain enough information and documentation to ensure that it has properly identified its customer. In addition to the customer's name, key identifying information may include the customer's address, place of business, and telephone number. A savings association may find it appropriate to verify addresses by physically observing the locations, and to verify telephone numbers by calling the numbers. Extra steps may be appropriate for customers outside a savings association's normal service area.

If a customer is a natural person, acceptable forms of identification would include a document with a photograph, a description of the person, the person's signature, and an easily recognizable identification issued by a government entity. While not an exhaustive list, examples of acceptable identification issued by a government entity include a driver's license or an identification card with a photograph issued by the State where the savings association is located, or a United States passport or alien registration card. Other forms of identification, while not sufficient without corroboration, can serve as helpful cumulative information. Examples of such information include an employer or student identification card, an out-of-State driver's license, a credit card, or a customer's current home utility bills.

For corporate or business customers, a savings association should verify that the corporation or business entity exists and engages in its stated business. A savings association should obtain evidence of a business's legal status, such as an incorporation document, a partnership agreement, association documents, or a business license. In some instances, it may also be appropriate to obtain information on the business's controlling owners. Additionally, a savings association should obtain a business customer's financial statements, a description of the business, and a description of its primary areas of trade. To verify information, a savings association may also obtain information related to a business's customers and suppliers.

At a minimum, for both natural persons and corporate or business customers, the savings association's records should indicate the type of identification obtained. If no legal impediment exists, the savings association should duplicate and maintain a copy of the documentation.

Establishing a customer relationship without face to face contact (e.g., by mail, Internet, or other electronic operations) poses difficulties in identifying customers. Even though photographic identification may be impractical, other acceptable means of identifying the customer are available. In such circumstances, a savings association should carefully verify a customer's address and telephone number. The savings association may use other commercially available data, such as credit reports and traditional information sources, to compare items such as a customer's name with his or her date of birth and social security number.

Introductions or referrals of prospective customers by established customers can provide extremely valuable background information about a prospective customer. The savings association should, of course, document details regarding the introduction or referral to assist in verifying the prospective customer's identity. Introductions and referrals cannot, however, take the place of the identification required under the proposed regulation.

Private banking accounts pose unique risks because customers may use them to protect or conceal their identities by using such account vehicles as personal investment companies, trusts, personal mutual investment funds, or a financial advisor's account. However, OTS and other Federal banking agencies believe that properly identifying private banking customers is necessary to depository institutions' safe and sound operation. Procedures for identifying private banking customers should be no different than the procedures for identifying other customers. A savings association can address private banking customers' confidentiality needs by developing special protections that limit access to information that could reveal the beneficial owners of these accounts.[3]

A savings association must also identify beneficial owners of assets bought, sold or managed through the savings association. Such transactions often occur at the behest of intermediaries, such as asset managers. The ''customer'' in these situations would include the beneficiaries of the transactions, not just the intermediaries. The amount of information necessary to fulfill Know Your Customer obligations would depend on the risk of illicit activity. Risk depends on matters such as the type, duration, and size of the transactions that a customer will conduct. Savings associations should address the type and amount of information necessary as a part of their Know Your Customer programs.

Where there is little risk of illegal activities by customers, savings associations would not be required to identify those indirect customers or monitor their transactions. For example, if the customer is a widely-held mutual fund or asset management fund whose shares are traded on a public exchange, there is little risk that the customer's shareholders would conduct illegal acts at the savings association. Similarly, if a savings association's customer is a regulated financial institution for whom the savings association is an intermediary in check clearing or funds transfer processing, there is little risk that the financial institution's customers would conduct illegal acts at the savings association. On the other hand, if the savings association's customer is a mutual fund established in an off-shore

[3] For an in-depth discussion of private banking and sound practices associated with the administration of private banking activities, see the July 1997 Guidance on Sound Risk Management Practices Governing Private Banking Activities, prepared by the Federal Reserve Bank of New York and issued by the Federal Reserve Board. It is available on the Federal Reserve Board's public Internet website (www.federalreserve.gov/).

jurisdiction that has a limited number of shareholders, the risk of illegal activity is higher. In that case, the savings association would be required to identify and monitor the customers of the mutual fund.

In addition to identifying each customer as a part of the Know Your Customer program, proposed § 563.178(e)(2) would require a savings association to identify its customer's sources of funds for transactions at the savings association. For purposes of determining and documenting the sources of funds, the amount of information necessary will depend on the type of customer. A savings association may categorize customers and obtain more or less information depending on the risks of illicit activities in the category. For example, many customers with demand deposit accounts obtain their funds from payroll deposits. Thus, a savings association may identify and document these customers' sources of funds relatively easily. On the other hand, a savings association would be required to obtain more documentation for customers with multiple deposits from a variety of sources. The proposed regulation would allow, and OTS would encourage, savings associations to categorize customers that share common characteristics in order to collect pertinent information with the least burden.

Proposed § 563.178(e)(3) would require a savings association to determine its customers' normal and expected transactions. This determination forms the basis for identifying transactions that are out of the ordinary, unexpected, and possibly suspicious. A savings association cannot completely determine a customer's normal and expected transactions when it first establishes a customer relationship. Accordingly, an effective Know Your Customer program should include procedures for periodically reviewing a savings association's original determination to determine whether the same transactions are still normal and expected.

OTS encourages savings associations to design flexible Know Your Customer programs. This proposed rule would allow savings associations to determine normal and expected transactions for categories or classes of customers that share common characteristics. Associations may use this flexibility to focus their efforts on areas with the greatest risk of illicit activity. For example, customers with demand deposit accounts funded by payroll deposits will, most likely, use the accounts for depositing salaries and for ordinary living expenses. Such accounts would require little analysis. Conversely, business accounts or private banking customers' accounts may require more in-depth analysis of the customers' intended use of the accounts.

Proposed § 563.178(e)(4) would require a savings association to monitor customers' transactions to determine if transactions are normal and expected for individual customers or for categories or classes of customers. While monitoring is critical, a savings association would not be required to monitor every transaction of every customer. Similarly, OTS does not suggest that savings associations must purchase expensive, sophisticated computer hardware or software to comply with the proposed rule. Rather, OTS encourages each savings association to design an effective monitoring program that is appropriate for that institution and that corresponds to the risk of illegal activities by its customers. For example, a savings association may categorize, for monitoring purposes, by account type, transaction type, account size, or number and size of transactions in accounts. A savings association may choose to monitor only those transactions that meet established parameters, such as dollar size, frequency, or source of funds, for a particular category of account. Whatever the method, savings associations should focus their monitoring on areas with the greatest risk of illegal activity. The Federal banking agencies are working on interpretive guidance to help institutions in this area. OTS will give deference to a savings association's monitoring program.

For some categories or classes of accounts, a savings association may have to monitor each transaction. For example, a savings association should understand the nature of and monitor each significant private banking transaction. Because one of the goals of private banking is to offer highly individualized service through the use of relationship managers, OTS does not believe that the burden of monitoring each transaction of private banking customers is significant.

In many instances, savings associations already monitor their customers' transactions. For example, savings associations monitor transactions in order to comply with suspicious activity reporting requirements. Similarly, savings associations monitor for large cash transactions, check kiting and attempted withdrawals from accounts with insufficient funds or from closed accounts. Savings associations' experience in monitoring these transactions should ease the impact of Know Your Customer monitoring requirements.

Proposed § 563.178(e)(4) would require savings associations to identify customer transactions that are not normal and expected. Under this proposed rule, a savings association would not be required to detect every abnormal or unexpected transaction. Rather, a savings association would be required to identify those monitored transactions that were not consistent with its determination of what is normal and expected for a particular customer.

Under proposed § 563.178(e)(5), the savings association would be required to determine whether each identified transaction is unusual or suspicious. If the transaction is suspicious, the association would be required to report the transaction under OTS's existing suspicious activities reporting requirements at 12 CFR 563.180. The proposed Know Your Customer regulation would impose no additional reporting requirements.

Section 563.178(f) How Do I Ensure Compliance With My Know Your Customer Program?

Under proposed § 563.178(f), a savings association must follow its Know Your Customer program. To do so, a savings association would have to establish internal controls to ensure ongoing compliance. In addition, the savings association would be required to use either outside parties or independent employees to test its compliance. The proposed rule would also require each savings association to designate at least one individual to be responsible for coordinating and monitoring day-to-day compliance. Finally, a savings association would be required to train the appropriate personnel in the Know Your Customer program at least annually.

These requirements are very similar to OTS's procedures for monitoring Bank Secrecy Act compliance.[4] Savings associations are familiar with, and regularly use, the Bank Secrecy Act procedures. Where appropriate, a savings association may charge its Bank Secrecy Act compliance officer with the responsibility for its Know Your Customer program. This should ease the burdens associated with complying with the new Know Your Customer regulation.

[4] 12 CFR 563.177(c) (1998).

Section 563.178(g) How Do I Document My Compliance With My Know Your Customer Program?

Proposed section 563.178(g) would require a savings association to maintain information and documents demonstrating that it has complied with all of the requirements of the Know Your Customer regulation, including the internal control, independent testing, and training requirements listed under the compliance requirements. The proposed rule would further require a savings association to make all Know Your Customer documents available to OTS within 48 hours of a request, unless OTS specifies a different time period.

In addition, if a savings association maintains information or documents at a location other than where it maintains a customer's account or where it renders financial services, it must also establish and follow procedures designed to ensure that its employees review, on an ongoing basis, information and documents to ensure that it has complied with the Know Your Customer requirements.

Comments Sought

OTS specifically seeks comments on the following questions:

1. Is the proposed definition of ''customer'' sufficient to include all persons who benefit from an account opened at a savings association, such as persons who establish off-shore shell companies, or entities that otherwise conduct their business through intermediaries?

2. Is the proposed definition of ''customer'' too broad, unnecessarily reaching persons who pose a minimal risk of illicit activities at savings associations?

3. Should ''customer'' include savings associations' counterparties in wholesale financial transactions? Should ''customer'' include correspondent banking relationships? Would a different standard be more appropriate for those transactions or relationships?

4. Would the benefits of implementing Know Your Customer requirements outweigh the costs involved? Are there alternatives that would better balance these costs and benefits?

5. Would the proposed regulation place savings associations at a competitive disadvantage with respect to other financial entities offering similar services that are not subject to similar requirements? Please cite specific examples.

6. Would the added compliance benefits of this proposal outweigh the actual or perceived invasion of personal privacy interests?

7. Should OTS waive Know Your Customer requirements for accounts below a minimum size threshold? If so, where should OTS set the threshold?

Executive Order 12866

The Director of OTS has determined that this proposed rule does not constitute a ''significant regulatory action'' for the purposes of Executive Order 12866.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, OTS must either provide an Initial Regulatory Flexibility Analysis (IRFA) with this proposed rule, or certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule is designed to be flexible so that each savings association could design a Know Your Customer program appropriate for its circumstances. While advantageous to savings associations, this flexibility makes it difficult to predict the economic impact of the proposed rule. OTS cannot, at this time, determine whether the proposed rule would have a significant economic impact on a substantial number of small institutions. OTS, therefore, includes this IRFA.

A. Reasons for and Objectives of the Proposed Rule

The proposed Know Your Customer rule is designed to deter and detect financial crimes, such as money laundering, tax evasion, and fraud. Financial crimes conducted at or through savings associations, even where savings associations are not parties to the transactions, can damage the reputations of the institutions involved, and possibly of the entire thrift industry. Under current law, savings associations are required to report suspicious activities to law enforcement authorities, but are not required to specifically search for suspicious activities. As a result, suspicious activities may go unreported, and illegal activity may go undetected. Know Your Customer programs would better enable savings associations to alert law enforcement authorities to potential criminal conduct and help deter criminal conduct in the thrift industry.

OTS has two primary objectives for this proposed rulemaking: (1) increasing savings associations' detection and reporting of suspicious customer activities; and (2) deterring financial crimes at savings associations.

The proposed rule would apply to large and small savings associations. Small savings associations are generally defined, for Regulatory Flexibility Act purposes, as those with assets under $100 million.[5] This proposed rule would apply to approximately 600 small savings associations.

B. Requirements of the Proposed Rule

The proposed rule would require savings associations to identify their customers, determine their customers' normal and expected transactions, determine their customers' sources of funds, monitor transactions to find those that are not normal and expected, and, for transactions that are not normal and expected, identify which are suspicious. Savings associations are required to report any suspicious transactions under current law, and this proposed rule would have no additional reporting requirements.

The impact of the proposed regulation on an institution's resources, and the skills necessary to comply with it, will vary from one institution to another because the proposed regulation is designed to take into account each institution's size and resources. Because each institution would be able to design an individualized Know Your Customer program, it is difficult to specify the type of professional skills necessary for preparing any required records or reports. Large institutions may be more likely to use computerized Know Your Customer programs, and in that event would be more likely to need professional computer skills. Small institutions that choose to automate their Know Your Customer programs would need professional computer skills.

Know Your Customer monitoring would be similar to monitoring that savings associations already do. For example, savings associations monitor customer transactions to ensure that cash transactions exceeding $10,000 are reported under the Bank Secrecy Act, to ensure that customers do not overdraw their accounts, and to ensure that loan payments are accurate and timely. Thus, Know Your Customer monitoring would rely, at least in part, on computer and other skills that savings association personnel already have and regularly use.

C. Significant Alternatives

1. No Know Your Customer Requirements

OTS considered recommending rather than requiring Know Your Customer

[5] 13 CFR 121.201, Division H (1998).

procedures. OTS decided to propose this rulemaking, however, because of the risks that savings associations face from customers who attempt illegal activities. Illegal activities would harm an association's reputation and that of the entire thrift industry. Requiring Know Your Customer programs significantly reduces the likelihood that some savings associations would not establish or adhere to such programs. In addition, because other Federal banking agencies are proposing Know Your Customer rules, OTS believes that criminals would quickly move their illegal funds transfers into savings associations without Know Your Customer programs, thus increasing those savings associations' exposure to illegal activity.

For these reasons, merely recommending Know Your Customer programs would interfere with OTS's goals of increasing savings associations' detection and reporting of suspicious customer activities, and deterring financial crimes at savings associations.

2. Exemption for Small Savings Associations

OTS considered exempting small institutions from Know Your Customer requirements. However, this alternative has the disadvantage of possibly creating a haven for criminal activity. It is likely that criminals would concentrate their activity at those institutions not subject to any Know Your Customer requirements. An exemption for small savings associations would conflict with OTS's goals of increasing savings associations' detection and reporting of suspicious customer activities and deterring financial crimes at savings associations.

3. Flexible Know Your Customer Requirements

OTS proposes requiring all savings associations to establish and follow Know Your Customer programs, but proposes allowing each institution to develop a program appropriate for its circumstances, including but not limited to its size and resources. This approach is preferable to the first two alternatives because it does not allow criminals to choose a savings association without Know Your Customer requirements to conduct illegal activities. A flexible alternative also avoids requirements beyond the means of small institutions. Small institutions could use simpler, less costly, and less burdensome programs than larger institutions.

D. Other Matters

OTS has statutory authority to promulgate these proposed regulations.[6] There are no federal rules that duplicate, overlap, or conflict with this proposed rule. The proposed rule complement OTS rules implementing the Bank Secrecy Act at 12 CFR 563.178 and the suspicious activity reporting requirements at 12 CFR 563.180.

OTS encourages comments on all aspects of this initial regulatory flexibility analysis, including comments on any significant economic impacts the proposed rule would have on small entities.

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. OTS has determined that the proposed rule will not result in expenditures by state, local, or tribal governments or by the private sector of $100 million or more. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

Paperwork Reduction Act

OTS invites comment on:

Whether the proposed information collection contained in this proposal is necessary for the proper performance of OTS's functions, including whether the information has practical utility;

The accuracy of OTS's estimate of the burden of the proposed information collection;

(1) Ways to enhance the quality, utility, and clarity of the information to be collected; Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

Estimates of capital and start-up costs of operation, maintenance and purchases of services to provide information.

Respondents/recordkeepers are not required to respond to this collection of information unless it displays a currently valid OMB control number.

OTS has submitted the collection of information requirements contained in this proposal to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Send comments on the collections of information to the Office of Management and Budget, Paperwork Reduction Project (1550), Washington, D.C. 20503, with copies to the Regulations and Legislation Division (1550), Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552.

The collection of information requirements in this proposed rule are found in 12 CFR 563.178. OTS requires this information for the proper supervision of savings associations' compliance with the Bank Secrecy Act. The likely respondents/recordkeepers are savings associations.

Estimated average annual burden hours per respondent/recordkeeper: 8.

Estimated number of respondents: 1191.

Estimated total annual reporting and recordkeeping burden: 9528.

Start up costs to respondents: None.

List of Subjects in 12 CFR Part 563

Accounting, Advertising, Crime, Currency, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

Accordingly, the Office of Thrift Supervision proposes to amend Title 12, Chapter V as set forth below:

PART 563—[AMENDED]

1. The authority citation for part 563 is revised to read as follows:

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1818, 1820, 1828, 1831p-1, 3806; 42 U.S.C. 4106.

2. Section 563.178 is added to read as follows:

§ 563.178 Know your customer.

(a) *Who must establish a Know Your Customer program?* Each savings association (''you'') must establish and comply with a written Know Your Customer program that describes your procedures for complying with this section. Your board of directors, or a committee of your board, must approve your Know Your Customer program and must record that approval in your official board minutes.

(b) *Why must I establish a Know Your Customer program?* These procedures: protect your reputation; facilitate your compliance with the Bank Secrecy Act, the suspicious activity reporting

[6] 12 U.S.C. 1464(a)(1), 1464(d)(6)(A), 1818(s)(1).

requirements of § 563.180, and safe and sound practices; and protect you from becoming a vehicle for, or a victim of, your customers' illegal activities.

(c) *Who is my customer?* Your customer is any person or entity who has an account with you involving the receipt or disbursal of funds, and any person or entity on behalf of whom such an account is maintained.

(d) *What transactions are covered under this section?* A transaction is any transaction by a customer that is conducted at your facilities or that involves you, regardless of where the transaction is conducted.

(e) *What must my Know Your Customer program contain?* Your Know Your Customer program may vary in scope and complexity according to categories or classes of customers that you establish, and the potential risk of illicit activities associated with your customers' accounts and transactions. Under your Know Your Customer program, you must do all of the following:

(1) Determine your prospective customers' identities. You must also determine the identities of your existing customers if you have reason to believe that you lack adequate information to know the identities of those customers.

(2) Identify the sources of funds for your customers' transactions. You may make this determination for a customer individually, or for categories or classes of customers that share common characteristics.

(3) Determine the types of transactions that you expect your customers to normally conduct (''normal and expected transactions''). You may make this determination for a customer individually, or you may determine what types of transactions are normal and expected for categories or classes of customers that share common characteristics.

(4) Monitor your customers' transactions and identify transactions that are not consistent with your customers' normal or expected transactions as determined under paragraph (e) (2) and (3) of this section. You may monitor transactions for each customer individually, or you may monitor transactions for categories or classes of customers that share common characteristics.

(5) Determine whether transactions identified under paragraph (e)(4) of this section are unusual or suspicious. If any are suspicious, you must follow OTS's suspicious activity reporting regulations at 12 CFR 563.180.

(f) *How do I ensure compliance with my Know Your Customer program?* To ensure compliance, you must do all of the following:

(1) Establish internal controls to ensure your ongoing compliance.

(2) Independently test your compliance. Your employees or outside parties may conduct the testing.

(3) Designate an individual(s) responsible for coordinating and monitoring day-to-day compliance.

(4) Train all appropriate personnel on your program at least annually.

(g) *How do I document my compliance with my Know Your Customer program?* (1) You must maintain information and documents demonstrating that you have complied with all of the requirements of this section, including internal control, independent testing, and training requirements of paragraph (f) of this section.

(2) You must provide all information and documents demonstrating your compliance with this section to OTS for examination and inspection within 48 hours of an OTS request, unless OTS specifies a different time period.

(3) If you maintain information or documents at a location other than where you maintain a customer's account or where you render financial services, you must establish and follow procedures designed to ensure that your employees review, on an ongoing basis, information and documents to ensure that you comply with this section.

Dated: November 9, 1998.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 98–32335 Filed 12–4–98; 8:45 am]

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Federal Register

Monday
December 7, 1998

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 91 et al.

Special Flight Rules in the Vicinity of Grant Canyon National Park; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 93, 121, and 135

[Docket No. 28537; SFAR 50–2; Notice No. 98–18]

Special Flight Rules in the Vicinity of Grand Canyon National Park

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: On December 31, 1996, the FAA published a final rule that codified the provisions of Special Federal Aviation Regulation (SFAR) No. 50–2, Special Flight Rules in the Vicinity of Grand Canyon National Park (GCNP); modified the dimensions of GCNP Special Flight Rules Area (SFRA); established new and modified existing flight-free zones; established new and modified existing flight corridors; established reporting requirements for commercial sightseeing companies operating in the SFRA; prohibited commercial sightseeing operations during certain time periods; and limited the number of aircraft that can be used for commercial sightseeing operations in the GCNP SFRA. On February 21, 1997, the FAA delayed the implementation of certain portions of that final rule. Specifically, that action delayed the effective date for 14 CFR Sections 93.301, 93.305, and 93.307 of the final rule and reinstated portions of and amended the expiration date of SFAR No. 50–2. However, that action did not affect or delay the implementation of the curfew, aircraft restrictions, reporting requirements or the other portions of the rule. This proposal would delay the effective date for 14 CFR Sections 93.301, 93.305, and 93.307 of the December 31, 1996 final rule until January 31, 2000. Additionally, this proposal would amend the expiration date of those portions of SFAR No. 50–2 that were reinstated in the February 21, 1997 final rule and extended in the rule published on December 17, 1997.

DATES: Comments must be received on or before January 6, 1999.

ADDRESSES: Comments should be mailed, in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 28537, 800 Independence Ave., SW., Washington, DC 20591. Comments may be sent electronically to the Rules Docket by using the following Internet address nprmcmts@mail.faa.dot.gov. Comments must be marked Docket No. 28537. Comments may be examined in the Rules Docket in Room 915G on weekdays between 8:30 a.m. and 5:00 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ellen Crum, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On December 31, 1996, the FAA published three concurrent actions (a final rule, a Notice of Proposed Rulemaking (NPRM), and a Notice of Availability of Proposed Commercial Air Tour Routes) in the **Federal Register** (62 FR 69301) as part of an overall strategy to further reduce the impact of aircraft noise on the GCNP environment and to assist the National Park Service (NPS) in achieving its statutory mandate imposed by Public Law 100–91. The final rule amended part 93 of the Federal Aviation Regulations and added a new subpart to codify the provisions of SFAR No. 50–2, modified the dimensions of the GCNP Special Flight Rules Area; established new and modifies existing flight-free zones; established new and modifies existing flight corridors; and established reporting requirements for commercial sightseeing companies operating in the Special Flight Rules Area. In addition, to provide further protection for park resources, the final rule prohibited commercial sightseeing operations in the Zuni and Dragon corridors during certain time periods, and placed a temporary limit on the number of aircraft that can be used for commercial sightseeing operations in the GCNP Special Flight Rules Area. These provisions originally were to become effective on May 1, 1997.

On February 21, 1997, the FAA issued a final rule and request for comments that delayed the implementation of certain sections of the final rule (62 FR 8862; February 26,1 997). Specifically, that action delayed the effective date, until January 31, 1998, of those sections of the rule that address the Special Flight Rules Area, flight-free zones, and flight corridors, respectively §§ 93.301, 93.305, and 93.307. In addition, certain portions of SFAR No. 50–2 were reinstated and the expiration date was extended. With the goal to produce the best air tour routes possible, implementation was delayed to allow the FAA and the Department of Interior (DOI) to consider comments and suggestions to improve the proposed route structure. This latter action did not affect or delay the implementation of the curfew, aircraft cap, or reporting requirements of the rule. This delay was subsequently extended until January 31, 1999 (62 FGR 66248; December 17, 1997).

Discussion of Comments

Eleven comments were submitted in response to the December 17, 1997, final rule that extended the implementation date of certain provisions of the final rule issued on December 31, 1996.

The Hualapai nation applauded the delay, saying that the FAA should reconsider what the Tribe considers the double standard used for measuring noise in the GCNP versus the Hualapai reservation. The Hualapai urged the FAA to develop an appropriate noise measurement standard for its religious sites and ceremonies. The nation also repeated its admonition to the FAA to be considered as a sovereign nation with incumbent rights therein.

The Sierra Club generally criticized the FAA and NPS for not making greater progress in the overall reduction of noise in GCNP. It also urged that the Zuni and Dragon corridors be closed to air tour traffic.

The Grand Canyon Air Tour Council (GCATC) was critical of the FAA for issuing a final rule with comment instead of a proposal, stating that there is no incentive for FAA to respond to comments after the fact and that such action without notice created 'discriminatory uncertainty'. GCATC also urged the FAA to delay implementation of the December 1996 final rule until the Air Tour Management Plan is completed.

Likewise, the Wilderness Society was critical of the FAA for not seeking comment on a proposal rather than publishing a final rule extension. The Society also commented that the delay was not warranted, that there has been little progress since the legislation 10 years ago, and that the FAA should cap operations now. National Parks and Conservation Society filed a similar comment, objecting to the delay and calling for a cap on operations.

The Grand Canyon Trust's comment incorporated its comments from previously filed comments on the July 1, 1996, notice.

A number of comments were submitted by individuals; the majority of these persons regretted the delay as being a setback for enjoyment of the park.

FAA's Response

The FAA agrees that the proper procedure for the delay in implementation of a final rule is

through notice and comment. The FAA and NPS have expended substantial resources on trying to determine the most appropriate air tour route through the SFRA in GCNP. These expenditures include noise modeling, interagency discussions, consultations with Native Americans, clarification of comments made on the various rulemakings, and preliminary development of the Comprehensive Noise Management Plan. To the extent that time permitted, the agencies would have sought comment prior to issuing a final decision to extend the effective date for the 1996 final rule. However, the FAA is responding to previously filed comments and now seeks comments from affected parties before further delaying those portions of the 1996 final rule pertaining to FFZs and flight corridors.

In response to those comments that nothing has been accomplished since the Overflights Act was enacted, the FAA and NPS disagree. The number of air tour operations in the GCNP have decreased in the past year. There is a cap on the number of aircraft permitted to operate in the Park, which prevents the addition of new aircraft into the SFRA. The curfew has been effective in removing both very early morning and late afternoon noise during peak tourist seasons for covered areas. The reporting requirement has provided the agencies with valuable information on how many operations there are, where they are occurring, and definitive noise footprints for most areas of the GCNP. In addition, valuable information has been gained through public meetings with the interested parties, through open forums exploring additional routes, and through consultations with the Native Americans.

Recent Actions

On May 15, 1997, the FAA published a Notice of Availability of Proposed Routes and a companion NPRM, Notice No. 97–6, that proposed two quiet technology corridors in GCNP. The first corridor, through the Bright Angel flight-free zone, would be used for quiet technology aircraft only. The second corridor, through National Canyon, would be for quiet technology aircraft for westbound traffic after December 21, 2001. The FAA, in consultation with the National Park Service (NPS), has determined to not proceed with the proposals set forth in Notice No. 97–6. The two agencies are considering alternatives to the National canyon area for air tour routes. Consequently, the FAA withdrew Notice No. 97–6 and amended the proposed rule, Notice No. 96–15, to remove the two sections that first proposed a National Canyon corridor through the Torroweap/Shinumo Flight-free Zone (FR 63 38232; July 15, 1998).

In addition, on April 28, 1998, the FAA convened interested parties for a public meeting in Flagstaff, Arizona to discuss yet another possible air tour route that is being considered by the FAA and NPS.

Most recently, by petition dated September 22, the Clark County Department of Aviation (Clark County) requests that the FAA delay the current January 31, 1999, effective date for the airspace portions of the final rule to January 31, 2001, to avoid unnecessary impacts to aviation safety and the Grand Canyon air tour industry. Petitioner also asks that the FAA initiate a stakeholder-based cooperative process to complete the Grand Canyon overflight regulatory structure in a coherent and timely fashion. Specific to this proposal, Clark County points out that it is too late for the FAA to promulgate a safe and defensible set of air tour routes prior to the January 31, 1999, effective date. The petitioner notes that the closing of the current tour route, Blue 1, by making the FFZ's effective, would divert an immense quantity of traffic onto other routes, such as Blue 2 and Blue Direct. Clerk County cites the significant economic impact that the lack of safe and viable air tour routes would effect; not only would air tour operators be affected, but there would be impacts on the ability of the region to attract both American and foreign tourists and on the ability of the Clark County airport system to support Southern Nevada aviation needs. Petitioner states that it does not seek an extension for the sake of delay; rather the uncertainty of the regulatory environment is harmful to air tour operators, local governments operating airports, Native Americans, and investors. For this reason, Clark County encourages a concerted effort whereby all stakeholders will negotiate long-term workable rules.

In response to Clark County's petition, the FAA finds that, because of the need to meet the legislative mandate to work toward the substantial restoration of natural quiet in GCNP, it cannot extend the effective date of the final rule as it relates to flight corridors and flight-free zones beyond January 31, 2000. Based on a substantial dedication of resources, in cooperation with NPS, the FAA believes that an acceptable route structure may be established by January 2000. In addition, while the FAA commends Clark County for its interest in a negotiated rulemaking effort to meet the needs of all stakeholders, it lacks the resources to direct this effort. Accordingly, the FAA must deny Clark County's petition. However, if the stakeholders can negotiate GCNP issues successfully, the FAA would be willing to accept a recommendation that it then could publish for comment.

Proposal

As of this date, the FAA is still working with the NPS to determine a route through the western portions of the Park that will provide air tour operators with a safe, viable air tour route while at the same time moving toward the legislatively mandated goal of the substantial restoration of natural quiet in Grand Canyon National Park. Because the air tour routes, flight free zones, and flight corridors are intrinsically related and thus must be implemented at the same time, the FAA proposes to extend the effective date of these portions of the December 1996 final rule until January 31, 2000. Although Clark County Department of Aviation requests that this date be extended to January 31, 2001, the FAA and NPS are optimistic that prior work done on proposed routes in the western portion of the GCNP will assist them in making a final determination in order to accommodate a January 31, 2000, effective date.

Economic Evaluation

In issuing the final rule for Special Flight Rules in the Vicinity of the GCNP, the FAA prepared a cost benefit analysis of the rule. A copy of the regulatory evaluation is located in docket Number 28537. That economic evaluation was later revised based on new information received on the number aircraft being operated in the SFRA. The reevaluation of the economic data, including alternatives considered, was published in the Notice of Clarification (62 FR 58898). In the notice, the FAA concluded that the rule is still cost beneficial. This extension of the effective date for the final rule will not affect that reevaluation, although the delay in the implementation of the FFZs will be cost relieving for air tour operators.

Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended, the FAA completed a final regulatory flexibility analysis of the final rule. This analysis was also reevaluated and revised findings were published in the Notice of Clarification referenced above, as a Supplemental Regulatory Flexibility Analysis. This extended delay of the compliance date will not affect that supplemental analysis.

Federalism Implications

The regulation proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposed regulation would not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

14 CFR Part 91

Aircraft, Airmen, Air traffic control, Aviation safety, Noise control.

14 CFR Part 93

Air traffic control, Airports, Navigation (Air).

14 CFR Part 121

Aircraft, Airmen, Aviation safety, Charter flights, Safety, Transportation.

14 CFR Part 135

Air taxis, Aircraft, Airmen, Aviation safety.

The Proposal

Accordingly, the Federal Aviation Administration (FAA) proposes to amend 14 CFR parts 91, 93, 121, and 135 as follows:

PARTS 91, 121 AND 135—[AMENDED]

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(G), 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506–46507, 47122, 47508, 47528–47531.

2. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

3. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702 44705, 44709, 44711–44713, 44715–44717, 44722.

4. In parts 91, 121, and 135, Special Federal Aviation Regulation No. 50–2, Section 9 is revised to read as follows:

SFAR 50–2—Special Flight Rules in the Vicinity of the Grand Canyon National Park, AZ

* * * * *

Sec 9. *Termination date.* Sections 1. Applicability, Section 4. Flight-free zones, and Section 5. Minimum flight altitudes, expire on 0901 UTC, January 31, 2000.

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

5. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40109, 40113, 44502, 44514, 44701, 44719, 46301.

The effective date of May 1, 1997, for new Sections 93.301, 93.305, and 93.307 to be added to 14 CFR Chapter I, is delayed until 0901 UTC, January 31, 2000.

Issued in Washington, DC, on December 1, 1998.

William J. Marx,

Acting Program Director, Air Traffic Airspace Management Program.

[FR Doc. 98–32406 Filed 12–2–98; 3:03 pm]

BILLING CODE 4910–13–M

Monday
December 7, 1998

Part IV

Environmental Protection Agency

National Recommended Water Quality Criteria; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–OW–6186–6a]

National Recommended Water Quality Criteria

AGENCY: Environmental Protection Agency (EPA).

ACTION: Compilation of recommended water quality criteria and notice of process for new and revised criteria.

SUMMARY: EPA is publishing a compilation of its national recommended water quality criteria for 157 pollutants, developed pursuant to section 304(a) of the Clean Water Act (CWA or the Act). These recommended criteria provide guidance for States and Tribes in adopting water quality standards under section 303(c) of the CWA. Such standards are used in implementing a number of environmental programs, including setting discharge limits in National Pollutant Discharge Elimination System (NPDES) permits. These water quality criteria are not regulations, and do not impose legally binding requirements on EPA, States, Tribes or the public.

This document also describes changes in EPA's process for deriving new and revised 304(a) criteria. Comments provided to the Agency about the content of this Notice will be considered in future publications of water quality criteria and in carrying out the process for deriving water quality criteria. With this improved process the public will have more opportunity to provide data and views for consideration by EPA. The public may send any comments or observations regarding the compilation format or the process for deriving new or revised water quality criteria to the Agency now, or anytime while the process is being implemented.

ADDRESSES: A copy of the document, ''National Recommended Water Quality Criteria'' is available from the U.S. EPA, National Center for Environmental Publications and Information, 11029 Kenwood Road, Cincinnati, Ohio 45242, phone (513) 489–8190. The publication is also available electronically at: http://www.epa.gov/ost. Send an original and 3 copies of written comments to W–98–24 Comment Clerk, Water Docket, MC 4104, US EPA, 401 M Street, S.W., Washington, D.C. 20460. Comments may also be submitted electronically to OW-Docket@epamail.epa.gov. Comments should be submitted as a WP5.1, 6.1 or an ASCII file with no form of encryption. The documents cited in the compilation of recommended criteria are available for inspection from 9 to 4 p.m., Monday through Friday, excluding legal holidays, at the Water Docket, EB57, East Tower Basement, USEPA, 401 M St., S.W., Washington, D.C. 20460. For access to these materials, please call (202) 260–3027 to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: Cindy A. Roberts, Health and Ecological Criteria Division (4304), U.S. EPA, 401 M. Street, S.W., Washington, D.C. 20460; (202) 260–2787; roberts.cindy@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. What Are Water Quality Criteria?

Section 304(a)(1) of the Clean Water Act requires EPA to develop and publish, and from time to time revise, criteria for water quality accurately reflecting the latest scientific knowledge. Water quality criteria developed under section 304(a) are based solely on data and scientific judgments on the relationship between pollutant concentrations and environmental and human health effects. Section 304(a) criteria do not reflect consideration of economic impacts or the technological feasibility of meeting the chemical concentrations in ambient water. Section 304(a) criteria provide guidance to States and Tribes in adopting water quality standards that ultimately provide a basis for controlling discharges or releases of pollutants. The criteria also provide guidance to EPA when promulgating federal regulations under section 303(c) when such action is necessary.

II. What is in the Compilation Published Today?

EPA is today publishing a compilation of its national recommended water quality criteria for 157 pollutants. This compilation is also available in hard copy at the address given above.

The compilation is presented as a summary table containing EPA's water quality criteria for 147 pollutants, and for an additional 10 pollutants, criteria solely for organoleptic effects. For each set of criteria, EPA lists a **Federal Register** citation, EPA document number or Integrated Risk Information System (IRIS) entry (www.epa.gov/ngispgm3/iris/irisdat). Specific information pertinent to the derivation of individual criteria may be found in cited references. If no criteria are listed for a pollutant, EPA does not have any national recommended water quality criteria.

These water quality criteria are the Agency's current recommended 304(a) criteria, reflecting the latest scientific knowledge. They are generally applicable to the waters of the United States. EPA recommends that States and Tribes use these water quality criteria as guidance in adopting water quality standards pursuant to section 303(c) of the Act and the implementing of federal regulations at 40 CFR part 131. Water quality criteria derived to address site-specific situations are not included; EPA recommends that States and Tribes follow EPA's technical guidance in the ''Water Quality Standards Handbook—2nd Edition,'' EPA, August 1994, in deriving such site-specific criteria. EPA recognizes that in limited circumstances there may be regulatory voids in the absence of State or Tribal water quality standards for specific pollutants. However, States and Tribes should utilize the existing State and Tribal narrative criteria to address such situations; States and Tribes may consult EPA criteria documents and cites in the summary table for additional information.

The national recommended water quality criteria include: previously published criteria that are unchanged; criteria that have been recalculated from earlier criteria; and newly calculated criteria, based on peer-reviewed assessments, methodologies and data, that have not been previously published.

The information used to calculate the water quality criteria is not included in the summary table. Most information has been previously published by the Agency in a variety of sources, and the summary table cites those sources.

When using these 304(a) criteria as guidance in adopting water quality standards, EPA recommends States and Tribes consult the citations referenced in the summary table for additional information regarding the derivation of individual criteria.

The Agency intends to revise the compilation of national recommended water quality criteria from time to time to keep States and Tribes informed as to the most current recommended water quality criteria.

III. How Are National Recommended Water Quality Criteria Used?

Once new or revised 304(a) criteria are published by EPA, the Agency expects States and Tribes to adopt promptly new or revised numeric water quality criteria into their standards consistent with one of the three options in 40 CFR 131.11. These options are: (1) Adopt the recommended section 304(a) criteria; (2) adopt section 304(a) criteria modified to reflect site-specific conditions; or, (3) adopt criteria derived using other scientifically defensible

methods. In adopting criteria under option (2) or (3), States and Tribes must adopt water quality criteria sufficient to protect the designated uses of their waters. When establishing a numerical value based on 304(a) criteria, States and Tribes may reflect site specific conditions or use other scientifically defensible methods. However, States and Tribes should not selectively apply data or selectively use endpoints, species, risk levels, or exposure parameters in deriving criteria; this would not accurately characterize risk and would not result in criteria protective of designated uses.

EPA emphasizes that, in the course of carrying out its responsibilities under section 303(c), it reviews State and Tribal water quality standards to assess the need for new or revised water quality criteria. EPA generally believes that five years from the date of EPA's publication of new or revised water quality criteria is a reasonable time by which States and Tribes should take action to adopt new or revised water quality criteria necessary to protect the designated uses of their waters. This period is intended to accommodate those States and Tribes that have begun a triennial review and wish to complete the actions they have underway, deferring initiating adoption of new or revised section 304(a) criteria until the next triennial review.

IV. What is the Status of Existing Criteria While They Are Under Revision?

The question of the status of the existing section 304(a) criteria often arises when EPA announces that it is beginning a reassessment of existing criteria. The general answer is that water quality criteria published by EPA remain the Agency's recommended water quality criteria until EPA revises or withdraws the criteria. For example, while undertaking recent reassessments of dioxin, PCBs, and other chemicals, EPA has consistently upheld the use of the current section 304(a) criteria for these chemicals and considers them to be scientifically sound until new, peer reviewed, scientific assessments indicate changes are needed. Therefore, the criteria in today's notice are and will continue to be the Agency's national recommended water quality criteria for States and Tribes to use in adopting or revising their water quality standards until superseded by the publication of revised criteria, or withdrawn by notice in the **Federal Register**.

V. What is the Process for Developing New or Revised Criteria?

Section 304(a)(1) of the CWA requires the Agency to develop and publish, and from time to time revise, criteria for water quality accurately reflecting the latest scientific knowledge. The Agency has developed an improved process that it intends to use when deriving new criteria or conducting a major reassessment of existing criteria. The purpose of the improved process is to provide expanded opportunities for public input, and to make the process more efficient.

When deriving new criteria, or when initiating a major reassessment of existing criteria, EPA will take the following steps.

1. EPA will first undertake a comprehensive review of available data and information.

2. EPA will publish a notice in the **Federal Register** and on the Internet announcing its assessment or reassessment of the pollutant. The notice will describe the data available to the Agency, and will solicit any additional pertinent data or views that may be useful in deriving new or revised criteria. EPA is especially interested in hearing from the public regarding new data or information that was unavailable to the Agency, and scientific views as to the application of the relevant Agency methodology for deriving water quality criteria.

3. After public input is received and evaluated, EPA will then utilize information obtained from both the Agency's literature review and the public to develop draft recommended water quality criteria.

4. EPA will initiate a peer review of the draft criteria. Agency peer review consists of a documented critical review by qualified independent experts. Information about EPA peer review practices may be found in the Science Policy Council's Peer Review Handbook (EPA 100–B–98–001, www.epa.gov).

5. Concurrent with the peer review in step four, EPA will publish a notice in the **Federal Register** and on the Internet, of the availability of the draft water quality criteria and solicit views from the public on issues of science pertaining to the information used in deriving the draft criteria. The Agency believes it is important to provide the public with the opportunity to provide scientific views on the draft criteria even though we are not required to invite and respond to written comments.

6. EPA will evaluate the results of the peer review, and prepare a response document for the record in accordance with EPA's Peer Review Handbook. EPA at the same time will consider views provided by the public on issues of science. Major scientific issues will be addressed in the record whether from the peer review or the public.

7. EPA will then revise the draft criteria as necessary, and announce the availability of the final water quality criteria in the **Federal Register** and on the Internet.

VI. What is the Process for Minor Revisions to Criteria?

In addition to developing new criteria, and conducting major reassessments of existing criteria, EPA also from time to time recalculates criteria based on new information pertaining to individual components of the criteria. For example, in today's notice, EPA has recalculated a number of criteria based on new, peer-reviewed data contained in EPA's IRIS. Because such recalculations normally result in only minor changes to the criteria, do not ordinarily involve a change in the underlying scientific methodologies, and reflect peer-reviewed data, EPA will typically publish such recalculated criteria directly as the Agency's recommended water quality criteria. If it appears that a recalculation results in a significant change EPA will follow the process of peer review and public input outlined above. Further, when EPA recalculates national water quality criteria in the course of proposing or promulgating state-specific federal water quality standards pursuant to section 303(c), EPA will offer an opportunity for national public input on the recalculated criteria.

VII. How Does the Process Outlined Above Improve Public Input and Efficiency?

In the past, EPA developed draft criteria documents and announced their availability for public comment in the **Federal Register**. This led to new data and views coming to EPA's attention after draft criteria had already been developed. Responding to new data would sometimes lead to extensive revisions.

The steps outlined above improve the criteria development process in the following ways.

1. The new process is Internet-based which is in line with EPA policy for public access and dissemination of information gathered by EPA. Use of the Internet will allow the public to be more engaged in the criteria development process than previously and to more knowledgeably follow criteria development. For new criteria or major revisions, EPA will announce its

intentions to derive the new or revised criteria on the Internet and include a list of the available literature. This will give the public an opportunity to provide additional data that might not otherwise be identified by the Agency.

2. The public now has two opportunities to contribute data and views, before development and during development, instead of a single opportunity after development.

3. EPA has instituted broader and more formal peer review procedures. This independent scientific review is a more rigorous disciplinary practice to ensure technical improvements in Agency decision making. Previously, EPA used the public comment process outlined above to obtain peer review. The new process allows for both public input and a formal peer review, resulting in a more thorough and complete evaluation of the criteria.

4. Announcing the availability of the draft water quality criteria on the Internet will give the public an opportunity to provide input on issues of science in a more timely manner.

VIII. Where Can I Find More Information About Water Quality Criteria and Water Quality Standards?

For more information about water quality criteria and Water Quality Standards refer to the following: Water Quality Standards Handbook (EPA 823–B94–005a); Advanced Notice of Proposed Rule Making (ANPRM), (63 FR 36742); Water Quality Criteria and Standards Plan—Priorities for the Future (EPA 822–R–98–003); Guidelines and Methodologies Used in the Preparation of Health Effects Assessment Chapters of the Consent Decree Water Criteria Documents (45 FR 79347); Draft Water Quality Criteria Methodology Revisions: Human Health (63 FR 43755, EPA 822–Z–98–001); and Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses (EPA 822/R–85–100); National Strategy for the Development of Regional Nutrient Criteria (EPA 822–R–98–002).

These publications may also be accessed through EPA's National Center for Environmental Publications and Information (NCEPI) or on the Office of Science and Technology's Home-page (www.epa.gov/OST).

IX. What Are the National Recommended Water Quality Criteria?

The following compilation and its associated footnotes and notes presents the national recommended water quality criteria.

NATIONAL RECOMMENDED WATER QUALITY CRITERIA FOR PRIORITY TOXIC POLLUTANTS

Priority pollutant	CAS No.	Freshwater		Saltwater		Human health for consumption of:		FR cite/source
		CMC (µg/L)	CCC (µg/L)	CMC (µg/L)	CCC (µg/L)	Water + organism (µg/L)	Organism only (µg/L)	
1 Antimony	7440360					14 [B,Z]	4300 [B]	57 FR 60848
2 Arsenic	7440382	340 [A,D,K]	150 [A,D,K]	69 [A,D,bb]	36 [A,D,bb]			62 FR 42160
						0.018 [C,M,S]	0.14 [C,M,S]	57 FR 60848
3 Beryllium	7440417					[J,Z]	[J]	62 FR 42160
4 Cadmium	7440439	4.3 [D,E,K]	2.2 [D,E,K]	42 [D,bb]	9.3 [D,bb]	[J,Z]	[J]	62 FR 42160
5a Chromium III	16065831	570 [D,E,K]	74 [D,E,K]					EPA 820/B–96–001
						[J,Z Total]	[J]	62 FR 42160
5b Chromium VI	18540299	16 [D,K]	11 [D,K]	1,100 [D,bb]	50 [D,bb]	[J,Z Total]	[J]	62 FR 42160
6 Copper	7440508	13 [D,E,K,cc]	9.0 [D,E,K,cc]	4.8 [D,cc,ff]	3.1 [D,cc,ff]	1,300 [U]		62 FR 42160
7 Lead	7439921	65 [D,E,bb,gg]	2.5 [D,E,bb,gg]	210 [D,bb]	8.1 [D,bb]	[J]	[J]	62 FR 42160
8 Mercury	7439976	1.4 [D,K,hh]	0.77 [D,K,hh]	1.8 [D,ee,hh]	0.94 [D,ee,hh]	0.050 [B]	0.051 [B]	62 FR 42160
9 Nickel	7440020	470 [D,E,K]	52 [D,E,K]	74 [D,bb]	8.2 [D,bb]	610 [B]	4,600 [B]	62 FR 42160
10 Selenium	7782492	[L,R,T]	5.0 [T]	290 [D,bb,dd]	71 [D,bb,dd]			62 FR 42160
						170 [Z]	11,000	IRIS 09/01/91
11 Silver	7440224	3.4 [D,E,G]		1.9 [D,G]				62 FR 42160
12 Thallium	7440280					1.7 [B]	6.3 [B]	57 FR 60848
13 Zinc	7440666	120 [D,E,K]	120 [D,E,K]	90 [D,bb]	81 [D,bb]			62 FR 42160
						9,100 [U]	69,000 [U]	IRIS 10/01/92
14 Cyanide	57125	22 [K,Q]	5.2 [K,Q]					EPA 820/B–96–001
				1 [Q,bb]	1 [Q,bb]	700 [B,Z]	220,000 [B,H]	57 FR 60848
15 Asbestos	1332214					7 million fibers/L [I]		57 FR 60848
16 2, 3, 7, 8-TCDD Dioxin	1746016					1.3E–8 [C]	1.4E–8 [C]	62 FR 42160
17 Acrolein	107028					320	780	57 FR 60848
18 Acrylonitrile	107131					0.059 [B,C]	0.66 [B,C]	57 FR 60848
19 Benzene	71432					1.2 [B,C]	71 [B,C]	62 FR 42160
20 Bromoform	75252					4.3 [B,C]	360 [B,C]	62 FR 42160
21 Carbon Tetrachloride	56235					0.25 [B,C]	4.4 [B,C]	57 FR 60848
22 Chlorobenzene	108907					680 [B,Z]	21,000 [B,H]	57 FR 60848
23 Chlorodibromomethane	124481					0.41 [B,C]	34 [B,C]	62 FR 42160
24 Chloroethane	75003							
25 2-Chloroethylvinyl Ether	110758							
26 Chloroform	67663					5.7 [B,C]	470 [B,C]	62 FR 42160
27 Dichlorobromomethane	75274					0.56 [B,C]	46 [B,C]	62 FR 42160
28 1,1-Dichloroethane	75343							
29 1,2-Dichloroethane	107062					0.38 [B,C]	99 [B,C]	57 FR 60848
30 1,1-Dichloroethylene	75354					0.057 [B,C]	3.2 [B,C]	57 FR 60848
31 1,2-Dichloropropane	78875					0.52 [B,C]	39 [B,C]	62 FR 42160
32 1,3-Dichloropropene	542756					10 [B]	1,700 [B]	57 FR 60848
33 Ethylbenzene	100414					3,100 [B,Z]	29,000 [B]	62 FR 42160
34 Methyl Bromide	74839					48 [B]	4000 [B]	62 FR 42160
35 Methyl Chloride	74873					[J]	[J]	62 FR 42160
36 Methylene Chloride	75092					4.7 [B,C]	1600 [B,C]	62 FR 42160
37 1,1,2,2-Tetrachloroethane	79345					0.17 [B,C]	11 [B,C]	57 FR 60848
38 Tetrachloroethylene	127184					0.8 [C]	8.85 [C]	57 FR 60848
39 Toluene	108883					6,800 [B,Z]	200,000 [B]	62 FR 42160
40 1,2-Trans-Dichloroethylene	156605					700 [B,Z]	140,000 [B]	62 FR 42160
41 1,1,1-Trichloroethane	71556					[J,Z]	[J]	62 FR 42160
42 1,1,2-Trichloroethane	79005					0.60 [B,C]	42 [B,C]	57 FR 60848
43 Trichloroethylene	79016					2.7 [C]	81 [C]	57 FR 60848
44 Vinyl Chloride	75014					2.0 [C]	525 [C]	57 FR 60848
45 2-Chlorophenol	95578					120 [B,U]	400 [B,U]	62 FR 42160
46 2,4-Dichlorophenol	120832					93 [B,U]	790 [B,U]	57 FR 60848
47 2,4-Dimethylphenol	105679					540 [B,U]	2,300 [B,U]	62 FR 42160
48 2-Methyl-4,6-Dinitrophenol	534521					13.4	765	57 FR 60848
49 2,4-Dinitrophenol	51285					70 [B]	14,000 [B]	57 FR 60848
50 2-Nitrophenol	88755							
51 4-Nitrophenol	100027							
52 3-Methyl-4-Chlorophenol	59507					[U]	[U].	

NATIONAL RECOMMENDED WATER QUALITY CRITERIA FOR PRIORITY TOXIC POLLUTANTS—Continued

Priority pollutant	CAS No.	Freshwater		Saltwater		Human health for consumption of:		FR cite/source
		CMC (µg/L)	CCC (µg/L)	CMC (µg/L)	CCC (µg/L)	Water + organism (µg/L)	Organism only (µg/L)	
53 Pentachlorophenol	87865	19 F,K	15 F,K	13 bb	7.9 bb	0.28 B,C	8.2 B,C,H	62 FR 42160
54 Phenol	108952					21,000 B,U		62 FR 42160
							4,600,000 B,H,U	57 FR 60848
55 2,4,6-Trichlorophenol	88062					2.1 B,C,U	6.5 B,C	62 FR 42160
56 Acenaphthene	83329					1,200 B,U	2,700 B,U	62 FR 42160
57 Acenaphthylene	208968							
58 Anthracene	120127					9,600 B	110,000 B	62 FR 42160
59 Benzidine	92875					0.00012 B,C	0.00054 B,C	57 FR 60848
60 BenzoaAnthracene	56553					0.0044 B,C	0.049 B,C	62 FR 42160
61 BenzoaPyrene	50328					0.0044 B,C	0.049 B,C	62 FR 42160
62 BenzobFluoranthene	205992					0.0044 B,C	0.049 B,C	62 FR 42160
63 BenzoghiPerylene	191242							
64 BenzokFluoranthene	207089					0.0044 B,C	0.049 B,C	62 FR 42160
65 Bis2-ChloroethoxyMethane	111911							
66 Bis2-ChloroethylEther	111444					0.031 B,C	1.4 B,C	57 FR 60848
67 Bis2-ChloroisopropylEther	39638329					1,400 B		62 FR 42160
							170,000 B	57 FR 60848
68 Bis2-EthylhexylPhthalate X	117817					1.8 B,C	5.9 B,C	57 FR 60848
69 4-Bromophenyl Phenyl Ether	101553							
70 Butylbenzyl Phthalate W	85687					3,000 B	5,200 B	62 FR 42160
71 2-Chloronaphthalene	91587					1,700 B	4,300 B	62 FR 42160
72 4-Chlorophenyl Phenyl Ether	7005723							
73 Chrysene	218019					0.0044 B,C	0.049 B,C	62 FR 42160
74 Dibenzoa,hAnthracene	53703					0.0044 B,C	0.049 B,C	62 FR 42160
75 1,2-Dichlorobenzene	95501					2,700 B,Z	17,000 B	62 FR 42160
76 1,3-Dichlorobenzene	541731					400	2,600	62 FR 42160
77 1,4-Dichlorobenzene	106467					400 Z	2,600	62 FR 42160
78 3,3′-Dichlorobenzidine	91941					0.04 B,C	0.077 B,C	57 FR 60848
79 Diethyl Phthalate W	84662					23,000 B	120,000 B	57 FR 60848
80 Dimethyl Phthalate W	131113					313,000	2,900,000	57 FR 60848
81 Di-n-Butyl Phthalate W	84742					2,700 B	12,000 B	57 FR 60848
82 2,4-Dinitrotoluene	121142					0.11 C	9.1 C	57 FR 60848
83 2,6-Dinitrotoluene	606202							
84 Di-n-Octyl Phthalate	117840							
85 1,2-Diphenylhydrazine	122667					0.040 B,C	0.54 B,C	57 FR 60848
86 Fluoranthene	206440					300 B	370 B	62 FR 42160
87 Fluorene	86737					1,300 B	14,000 B	62 FR 42160
88 Hexachlorobenzene	118741					0.00075 B,C	0.00077 B,C	62 FR 42160
89 Hexachlorobutadiene	87683					0.44 B,C	50 B,C	57 FR 60848
90 Hexachlorocyclopentadiene	77474					240 B,U,Z	17,000 B,H,U	57 FR 60848
91 Hexachloroethane	67721					1.9 B,C	8.9 B,C	57 FR 60848
92 Ideno 1,2,3-cdPyrene	193395					0.0044 B,C	0.049 B,C	62 FR 42160
93 Isophorone	78591					36 B,C	2,600 B,C	IRIS 11/01/97
94 Naphthalene	91203							
95 Nitrobenzene	98953					17 B	1,900 B,H,U	57 FR 60848
96 N-Nitrosodimethylamine	62759					0.00069 B,C	8.1 B,C	57 FR 60848
97 N-Nitrosodi-n-Propylamine	621647					0.005 B,C	1.4 B,C	62 FR 42160
98 N-Nitrosodiphenylamine	86306					5.0 B,C	16 B,C	57 FR 60848
99 Phenanthrene	85018							
100 Pyrene	129000					960 B	11,000 B	62 FR 42160
101 1,2,4-Trichlorobenzene	120821					260 Z	940	IRIS 11/01/96
102 Aldrin	309002	3.0 G		1.3 G		0.00013 B,C	0.00014 B,C	62 FR 42160
103 alpha-BHC	319846					0.0039 B,C	0.013 B,C	62 FR 42160
104 beta-BHC	319857					0.014 B,C	0.046 B,C	62 FR 42160
105 gamma-BHC (Lindane)	58899	0.95 K		0.16 G		0.019 C	0.063 C	62 FR 42160
106 delta-BHC	319868							
107 Chlordane	57749	2.4 G	0.0043 G,aa	0.09 G	0.004 G,aa			62 FR 42160
						0.0021 B,C	0.0022 B,C	IRIS 02/07/98

108	4,4′-DDT	50293	1.1 G	0.001 G,aa	0.13 G	0.001 G,aa	0.00059 B,C	0.00059 B,C	62 FR 42160
109	4,4′-DDE	72559					0.00059 B,C	0.00059 B,C	62 FR 42160
110	4,4′-DDD	72548					0.00083 B,C	0.00084 B,C	62 FR 42160
111	Dieldrin	60571	0.24 K	0.056 K,O	0.71 G	0.0019 G,aa	0.00014 B,C	0.00014 B,C	62 FR 42160
112	alpha-Endosulfan	959988	0.22 G,Y	0.056 G,Y	0.034 G,Y	0.0087 G,Y	110 B	240 B	62 FR 42160
113	beta-Endosulfan	33213659	0.22 G,Y	0.056 G,Y	0.034 G,Y	0.0087 G,Y	110 B	240 B	62 FR 42160
114	Endosulfan Sulfate	1031078					110 B	240 B	62 FR 42160
115	Endrin	72208	0.086 K	0.036 K,O	0.037 G	0.0023 G,aa	0.76 B	0.81 B,H	62 FR 42160
116	Endrin Aldehyde	7421934					0.76 B	0.81 B,H	62 FR 42160
117	Heptachlor	76448	0.52 G	0.0038 G,aa	0.053 G	0.0036 G,aa	0.00021 B,C	0.00021 B,C	62 FR 42160
118	Heptachlor Epoxide	1024573	0.52 G,V	0.0038 G,V,aa	0.053 G,V	0.0036 G,V,aa	0.00010 B,C	0.00011 B,C	62 FR 42160
119	Polychlorinated Biphenyls PCBs			0.014 N,aa		0.03 N,aa			62 FR 42160
							0.00017 B,C,P	0.00017 B,C,P	63 FR 16182
120	Toxaphene	8001352	0.73	0.0002 aa	0.21	0.0002 aa	0.00073 B,C	0.00075 B,C	62 FR 42160

Footnotes:

A[A] This recommended water quality criterion was derived from data for arsenic (III), but is applied here to total arsenic, which might imply that arsenic (III) and arsenic (V) are equally toxic to aquatic life and that their toxicities are additive. In the arsenic criteria document (EPA 440/5–84–033, January 1985), Species Mean Acute Values are given for both arsenic (III) and arsenic (V) for five species and the ratios of the SMAVs for each species range from 0.6 to 1.7. Chronic values are available for both arsenic (III) and arsenic (V) for one species; for the fathead minnow, the chronic value for arsenic (V) is 0.29 times the chronic value for arsenic (III). No data are known to be available concerning whether the toxicities of the forms of arsenic to aquatic organisms are additive.

A[B] This criterion has been revised to reflect The Environmental Protection Agency's q1* or RfD, as contained in the Integrated Risk Information System (IRIS) as of April 8, 1998. The fish tissue bioconcentration factor (BCF) from the 1980 Ambient Water Quality Criteria document was retained in each case.

A[C] This criterion is based on carcinogenicity of 10^{-6} risk. Alternate risk levels may be obtained by moving the decimal point (e.g., for a risk level of 10^{-5}, move the decimal point in the recommended criterion one place to the right).

A[D] Freshwater and saltwater criteria for metals are expressed in terms of the dissolved metal in the water column. The recommended water quality criteria value was calculated by using the previous 304(a) aquatic life criteria expressed in terms of total recoverable metal, and multiplying it by a conversion factor (CF). The term ''Conversion Factor'' (CF) represents the recommended conversion factor for converting a metal criterion expressed as the total recoverable fraction in the water column to a criterion expressed as the dissolved fraction in the water column. (Conversion Factors for saltwater CCCs are not currently available. Conversion factors derived for saltwater CMCs have been used for both saltwater CMCs and CCCs.) See ''Office of Water Policy and Technical Guidance on Interpretation and Implementation of Aquatic Life Metals Criteria,'' October 1, 1993, by Martha G. Prothro, Acting Assistant Administrator for Water, available from the Water Resource center, USEPA, 401 M St., SW, mall code RC4100, Washington, DC 20460; and 40 CFR§131.36(b)(1). Conversion Factors applied in the table can be found in Appendix A to the Preamble—Conversion Factors for Dissolved Metals.

A[E] The freshwater criterion for this metal is expressed as a function of hardness (mg/L) in the water column. The value given here corresponds to a hardness of 100 mg/L. Criteria values for other hardness may be calculated from the following: CMC (dissolved) = exp $\{m_A$ [ln(hardness)]+$b_A\}$ (CF), or CCC (dissolved) = exp $\{m_C$ [ln (hardness)]+$b_C\}$ (CF) and the parameters specified in Appendix B to the Preamble—Parameters for Calculating Freshwater Dissolved Metals Criteria That Are Hardness-Dependent.

A[F] Freshwater aquatic life values for pentachlorophenol are expressed as a function of pH, and are calculated as follows: CMD=exp(1.005(pH) − 4.869); CCC=exp(1.005 (pH) − 5.134). Values displayed in table correspond to a pH of 7.8.

A[G] This Criterion is based on 304(a) aquatic life criterion issued in 1980, and was issued in one of the following documents: Aldrin/Dieldrin (EPA 440/5–80–019), Chlordane (EPA 440/5–80–027), DDT (EPA 440/5–80–038), Endosulfan (EPA 440/5–80–046), Endrin (EPA 440/5–80–047), Heptachlor (440/5–80–052), Hexachlorocyclohexane (EPA 440/5–80–054), Silver (EPA 440/5–80–071). The Minimum Data Requirements and derivation procedures were different in the 1980 Guidelines than in the 1985 Guidelines. For example, a ''CMC'' derived using the 1980 Guidelines was derived to be used as an instantaneous maximum. If assessment is to be done using an averaging period, the values given should be divided by 2 to obtain a value that is more comparable to a CMC derived using the 1985 Guidelines.

A[H] No criterion for protection of human health from consumption of aquatic organisms excluding water was presented in the 1980 criteria document or in the 1986 Quality Criteria for Water. Nevertheless, sufficient information was presented in the 1980 document to allow the calculation of a criterion, even though the results of such a calculation were not shown in the document.

A[I] This criterion for asbestos is the Maximum Contaminant Level (MCL) developed under the Safe Drinking Water Act (SDWA).

A[J] EPA has not calculated human health criterion for this contaminant. However, permit authorities should address this contaminant in NPDES permit actions using the State's existing narrative criteria for toxics.

A[K] This recommended criterion is based on a 304(a) aquatic life criterion that was issued in the 1995 Updates: Water Quality Criteria Documents for the Protection of Aquatic Life in Ambient Water, (EPA–820–B–96–011, September 1996). This value was derived using the GLI Guidelines (60 FR 15393–15399, March 23, 1995; 40 CFR 132 Appendix A); the difference between the 1985 Guidelines and the GLI Guidelines are explained on page iv of the 1995 Updates. None of the decisions concerning the derivation of this criterion were affected by any considerations that are specific to the Great Lakes.

A[L] The CMC=1/[(f1/CMC1)=(f2/CMC2)] where f1 and f2 are the fractions of total selenium that are treated as selenite and selenate, respectively, and CMC1 and CMC2 are 185.9 μg/l and 12.83 μg/l, respectively.

A[M] EPA is currently reassessing the criteria for arsenic. Upon completion of the reassessment the Agency will publish revised criteria as appropriate.

A[N] PCBs are a class of chemicals which include aroclors, 1242, 1254, 1221, 1232, 1248, 1260, and 1016, CAS numbers 53469219, 11097691, 11104282, 11141165, 12672296, 11096825 and 12674112 respectively. The aquatic life criteria apply to this set of PCBs.

A[O] The derivation of the CCC for this pollutant did not consider exposure through the diet, which is probably important for aquatic life occupying upper trophic levels.

A[P] This criterion applies to total pcbs, i.e., the sum of all congener or all isomer analyses.

A[Q] This recommended water quality criterion is expressed as μg free cyanide (as CN)/L.

A[R] This value was announced (61 FR 58444–58449, November 14, 1996) as a proposed GLI 303(c) aquatic life criterion. EPA is currently working on this criterion and so this value might change substantially in the near future.

A[S] This recommended water quality criterion refers to the inorganic form only.

A[T] This recommended water quality criterion is expressed in terms of total recoverable metal in the water column. It is scientifically acceptable to use the conversion factor of 0.922 that was used in the GLI to convert this to a value that is expressed in terms of dissolved metal.

A[U] The organoleptic effect criterion is more stringent than the value for priority toxic pollutants.

[V] This value was derived from data for heptachlor and the criteria document provides insufficient data to estimate the relative toxicities of heptachlor and heptachlor epoxide.

[W] Although EPA has not published a final criteria document for this compound it is EPA's understanding that sufficient data exist to allow calculation of aquatic criteria. It is anticipated that industry intends to publish in the peer reviewed literature draft aquatic life criteria generated in accordance with EPA Guidelines. EPA will review such criteria for possible issuance as national WQC.

[X] There is a full set of aquatic life toxicity data that show that DEHP is not toxic to aquatic organisms at or below its solubility limit.

[Y] This value was derived from data for endosulfan and is most appropriately applied to the sum of alpha-endosulfan and beta-endosulfan.

[Z] A more stringent MCL has been issued by EPA. Refer to drinking water regulations (40 CFR 141) or Safe Drinking Water Hotline (1–800–426–4791) for values.

[aa] This CCC is based on the Final Residue Value procedure in the 1985 Guidelines. Since the publication of the Great Lakes Aquatic Life Criteria Guidelines in 1995 (60FR 15393–15399, March 23, 1995), the Agency no longer uses the Final Residue Value procedure for deriving CCCs for new or revised 304(a) aquatic life criteria.

[bb] This water quality criterion is based on 304(a) aquatic life criterion that was derived using the 1985 Guidelines (Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses, PB85–227049, January 1985) and was issued in one of the following criteria documents: Arsenic (EPA 440/5–84–033), Cadmium (EPA 440/5–84–032), Chromium (EPA 440/5–84–029), Copper (EPA 440/5–84–031), Cyanide (EPA 400/5–84–028), Lead (EPA 440/5–84–027), Nickel (EPA 440/5–86–004), Pentachlorophenol (EPA 440/5–86–009), Toxaphene (EPA 440/5–86–006), Zinc (EPA 440/5–87–003).

[cc] When the concentration of dissolved organic carbon is elevated, copper is substantially less toxic and use of Water-Effect Ratios might be appropriate.

[dd] The selenium criteria document (EPA 440/5–87–006), September 1987) provides that if selenium is as toxic to saltwater fishes in the field as it is to freshwater fishes in the field, the status of the fish community should be monitored whenever the concentration of selenium exceeds 5.0 µg/L in salt water because the saltwater CCC does not take into account uptake via the food chain.

[ee] This recommended water quality criterion was derived on page 43 of the mercury criteria document (EPA 440/5–84–026, January 1985). The saltwater CCC of 0.025 µg/L given on page 23 of the criteria document is based on the Final Residue Value procedure in the 1985 Guidelines. Since the publication of the Great Lakes Aquatic Life Criteria Guidelines in 1995 (60FR15393–15399, March 23, 1995), the Agency no longer uses the Final Residue Value procedure for deriving CCCs for new or revised 304(a) aquatic life criteria.

[ff] This recommended water quality criterion was derived in Ambient Water Quality Criteria Saltwater Copper Addendum (Draft, April 14, 1995) and was promulgated in the Interim Final National Toxics Rule (60FR22228–222237, May 4, 1995).

[gg] EPA is actively working on this criterion and so this recommended water quality criterion may change substantially in the near future.

[hh] This recommended water quality criterion was derived from data for inorganic mercury (II), but is applied here to total mercury. If a substantial portion of the mercury in the water column is methylmercury, this criterion will probably be under protective. In addition, even though inorganic mercury is converted to methylmercury and methylmercury bioaccumulates to a great extent, this criterion does not account for uptake via the food chain because sufficient data were not available when the criteria was derived.

NATIONAL RECOMMENDED WATER QUALITY CRITERIA FOR NON PRIORITY POLLUTANTS

	Non priority pollutant	CAS No.	Freshwater		Saltwater		Human health for consumption of:		FR cite/source
			CMC (µg/L)	CCC (µg/L)	CMC (µg/L)	CCC (µg/L)	Water + organism (µg/L)	Organism only (µg/L)	
1	Alkalinity	.....	.....	20000 [F]	.....	.....	.....	.....	Gold Book
2	Aluminum pH 6.5–9.0	7429905	750 [G,I]	87 [G,I,L]	.....	.....	.....	.....	53 FR 33178
3	Ammonia	7664417	FRESHWATER CRITERIA ARE pH DEPENDENT—SEE DOCUMENT SALTWATER CRITERIA ARE pH AND TEMPERATURE DEPENDENT [D]						EPA822–R–98–008 EPA440/5–88–004
4	Aesthetic Qualities	.....	NARRATIVE STATEMENT—SEE DOCUMENT						Gold Book
5	Bacteria	.....	FOR PRIMARY RECREATION AND SHELLFISH USES—SEE DOCUMENT						Gold Book
6	Barium	7440393	.....	.....	.....	.....	1,000 [A]	.....	Gold Book
7	Boron	.....	NARRATIVE STATEMENT—SEE DOCUMENT						Gold Book
8	Chloride	16887006	860000 [G]	230000 [G]	.....	.....	.....	.....	53 FR 19028
9	Chlorine	7782505	19	11	13	7.5	[C]	.....	Gold Book
10	Chlorophenoxy Herbicide 2,4,5,-TP	93721	.....	.....	.....	.....	10 [A]	.....	Gold Book
11	Chlorophenoxy Herbicide 2,4-D	94757	.....	.....	.....	.....	100 [A,C]	.....	Gold Book
12	Chloropyrifos	2921882	0.083 [G]	0.041 [G]	0.011 [G]	0.0056 [G]	.....	.....	Gold Book
13	Color	.....	NARRATIVE STATEMENT—SEE DOCUMENT [F]						Gold Book
14	Demeton	8065483	.....	0.1 [F,H]	.....	0.1 [F,H]	.....	.....	Gold Book
15	Ether, Bis Chloromethyl	542881	.....	.....	.....	.....	0.00013 [E]	0.00078 [E]	IRIS 01/01/91
16	Gases, Total Dissolved	.....	NARRATIVE STATEMENT—SEE DOCUMENT [F]						Gold Book
17	Guthion	86500	.....	0.01 [F,H]	.....	0.01 [F,H]	.....	.....	Gold Book
18	Hardness	.....	NARRATIVE STATEMENT—SEE DOCUMENT						Gold Book
19	Hexachlorocyclo-hexane-Technical	319868	.....	.....	.....	.....	0.0123	0.0414	Gold Book
20	Iron	7439896	.....	1000 [F]	.....	.....	300 [A]	.....	Gold Book
21	Malathion	121755	.....	0.1 [F,H]	.....	.....	.....	.....	Gold Book
22	Manganese	7439965	.....	.....	.....	.....	50 [A]	100 [A]	Gold Book
23	Methoxychlor	72435	.....	0.03 [F,H]	.....	0.03 [F,H]	100 [A,C]	.....	Gold Book
24	Mirex	2385855	.....	0.001 [F,H]	.....	0.001 [F,H]	.....	.....	Gold Book
25	Nitrates	14797558	.....	.....	.....	.....	10,000 [A]	.....	Gold Book
26	Nitrosamines	.....	.....	.....	.....	.....	0.0008	1.24	

27	Dinitrophenols	25550587					70	14,000		Gold Book
28	Nitrosodibutylamine,N	924163					0.0064 [A]	0.587 [A]		Gold Book
29	Nitrosodiethylamine,N	55185					0.0008 [A]	1.24 [A]		Gold Book
30	Nitrosopyrrolidine,N	930552					0.016	91.9		Gold Book
31	Oil and Grease		NARRATIVE STATEMENT—SEE DOCUMENT [F]							Gold Book
32	Oxygen, Dissolved	7782447	WARMWATER AND COLDWATER MATRIX—SEE DOCUMENT [O]							Gold Book
33	Parathion	56382	0.065 [J]	0.013 [J]						Gold Book
34	Pentachlorobenzene	608935					3.5 [E]	4.1 [E]		IRIS 03/01/88
35	pH			6.5–9 [F]		6.5–8.5 [F,K]	5–9			Gold Book
36	Phosphorus Elemental	7723140				0.1 [F,K]				Gold Book
37	Phosphate Phosphorus		NARRATIVE STATEMENT—SEE DOCUMENT							Gold Book
38	Solids Dissolved and Salinity						250,000 [A]			Gold Book
39	Solids Suspended and Turbidity		NARRATIVE STATEMENT—SEE DOCUMENT [F]							Gold Book
40	Sulfide-Hydrogen Sulfide	7783064		2.0 [F,H]		2.0 [F,H]				Gold Book
41	Tainting Substances		NARRATIVE STATEMENT—SEE DOCUMENT							Gold Book
42	Temperature		SPECIES DEPENDENT CRITERIA—SEE DOCUMENT [M]							Gold Book
43	Tetrachlorobenzene,1,2,4,5-	95943					2.3 [E]	2.9 [E]		IRIS03/01/91
44	Tributyltin TBT		0.46 [N]	0.063 [N]	0.37 [N]	0.010 [N]				62 FR 42554
45	Trichlorophenol,2,4,5-	95954					2,600 [B,E]	9,800 [B,E]		IRIS 03/01/88

Footnotes:

[A] This human health criterion is the same as originally published in the Red Book which predates the 1980 methodology and did not utilize the fish ingestion BCF approach. This same criterion value is now published in the Gold Book

[B] The organoleptic effect criterion is more stringent than the value presented in the non priority pollutants table.

[C] A more stringent Maximum Contaminant Level (MCL) has been issued by EPA under the Safe Drinking Water Act. Refer to drinking water regulations 40 CFR 141 or Safe Drinking Water Hotline (1–800–426–4791) for values.

[D] According to the procedures described in the Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses, except possibly where a very sensitive species is important at a site, freshwater aquatic life should be protected if both conditions specified in Appendix C to the Preamble—Calculation of Freshwater Ammonia Criterion are satisfied.

[E] This criterion has been revised to reflect The Environmental Protection Agency's q1* or RfD, as contained in the Integrated Risk Information System (IRIS) as of April 8, 1998. The fish tissue bioconcentration factor (BCF) used to derive the original criterion was retained in each case.

[F] The derivation of this value is presented in the Red Book (EPA 440/9–76–023, July, 1976).

[G] This value is based on a 304(a) aquatic life criterion that was derived using the 1985 Guidelines (Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses, PB85–227049, January 1985) and was issued in one of the following criteria documents: Aluminum (EPA 440/5–86–008); Chloride (EPA 440/5–88–001); Chloropyrifos (EPA 440/5–86–005).

[H] This CCC is based on the Final Residue Value procedure in the 1985 Guidelines. Since the publication of the Great Lakes Aquatic Life Criteria Guidelines in 1995 (60 FR 15393–15399, March 23, 1995), the Agency no longer uses the Final Residue Value procedure for deriving CCCs for new or revised 304(a) aquatic life criteria.

[I] This value is expressed in terms of total recoverable metal in the water column.

[J] This value is based on a 304(a) aquatic life criterion that was issued in the 1995 Updates: Water Quality Criteria Documents for the Protection of Aquatic Life in Ambient Water (EPA–820–B–96–001). This value was derived using the GLI Guidelines (60 FR 15393–15399, March 23, 1995; 40 CFR 132 Appendix A); the differences between the 1985 Guidelines and the GLI Guidelines are explained on page iv of the 1995 Updates. No decision concerning this criterion was affected by any considerations that are specific to the Great Lakes.

[K] According to page 181 of the Red Book: For open ocean waters where the depth is substantially greater than the euphotic zone, the pH should not be changed more than 0.2 units from the naturally occurring variation or any case outside the range of 6.5 to 8.5. For shallow, highly productive coastal and estuarine areas where naturally occurring pH variations approach the lethal limits of some species, changes in pH should be avoided but in any case should not exceed the limits established for fresh water, i.e., 6.5–9.0.

[L] There are three major reasons why the use of Water-Effect Ratios might be appropriate. (1) The value of 87 μg/l is based on a toxicity test with the striped bass in water with pH=6.5–6.6 and hardness <10 mg/L. Data in ''Aluminum Water-Effect Ratio for the 3M Plant Effluent Discharge, Middleway, West Virginia'' (May 1994) indicate that aluminum is substantially less toxic at higher pH and hardness, but the effects of pH and hardness are not well quantified at this time. (2) In tests with the brook trout at low pH and hardness, effects increased with increasing concentrations of total aluminum even though the concentration of dissolved aluminum was constant, indicating that total recoverable is a more appropriate measurement than dissolved, at least when particulate aluminum is primarily aluminum hydroxide particles. In surface waters, however, the total recoverable procedure might measure aluminum associated with clay particles, which might be less toxic than aluminum associated with aluminum hydroxide. (3) EPA is aware of field data indicating that many high quality waters in the U.S. contain more than 87 μg aluminum/L, when either total recoverable or dissolved is measured.

[M] U.S. EPA. 1973. Water Quality Criteria 1972. EPA–R3–73–033. National Technical Information Service, Springfield, VA.; U.S. EPA. 1977. Temperature Criteria for Freshwater Fish: Protocol and Procedures. EPA–600/3–77–061. National Technical Information Service, Springfield, VA.

[N] This value was announced (62 FR 42554, August 7, 1997) as a proposed 304(a) aquatic life criterion. Although EPA has not responded to public comment, EPA is publishing this as a 304(a) criterion in today's notice as guidance for States and Tribes to consider when adopting water quality criteria.

[O] U.S. EPA. 1986. Ambient Water Quality Criteria for Dissolved Oxygen. EPA 440/5–86–003. National Technical Information Service, Springfield, VA.

NATIONAL RECOMMENDED WATER QUALITY CRITERIA FOR ORGANOLEPTIC EFFECTS

	Pollutant	CAS No.	Organoleptic effect criteria (µg/L)	FR cite/source
1	Acenaphthene	208968	20	Gold Book
2	Monochlorobenzene	108907	20	Gold Book
3	3-Chlorophenol	.....	0.1	Gold Book
4	4-Chlorophenol	106489	0.1	Gold Book
5	2,3-Dichlorophenol	.....	0.04	Gold Book
6	2,5-Dichlorophenol	.....	0.5	Gold Book
7	2,6-Dichlorophenol	.....	0.2	Gold Book
8	3,4-Dichlorophenol	.....	0.3	Gold Book
9	2,4,5-Trichlorophenol	95954	1	Gold Book
10	2,4,6-Trichlorophenol	88062	2	Gold Book
11	2,3,4,6-Tetrachlorophenol	.....	1	Gold Book
12	2-Methyl-4-Chlorophenol	.....	1800	Gold Book
13	3-Methyl-4-Chlorophenol	59507	3000	Gold Book
14	3-Methyl-6-Chlorophenol	.....	20	Gold Book
15	2-Chlorophenol	95578	0.1	Gold Book
16	Copper	744058	1000	Gold Book
17	2,4-Dichlorophenol	120832	0.3	Gold Book
18	2,4-Dimethylphenol	105679	400	Gold Book
19	Hexachlorocyclopentadiene	77474	1	Gold Book
20	Nitrobenzene	98953	30	Gold Book
21	Pentachlorophenol	87865	30	Gold Book
22	Phenol	108952	300	Gold Book
23	Zinc	7440666	5000	45 FR 79341

General Notes:

1. These criteria are based on organoleptic (taste and odor) effects. Because of variations in chemical nomenclature systems, this listing of pollutants does not duplicate the listing in Appendix A of 40 CFR Part 423. Also listed are the Chemical Abstracts Service (CAS) registry numbers, which provide a unique identification for each chemical.

National Recommended Water Quality Criteria

Additional Notes

1. Criteria Maximum Concentration and Criterion Continuous Concentration

The Criteria Maximum Concentration (CMC) is an estimate of the highest concentration of a material in surface water to which an aquatic community can be exposed briefly without resulting in an unacceptable effect. The Criterion Continuous Concentration (CCC) is an estimate of the highest concentration of a material in surface water to which an aquatic community can be exposed indefinitely without resulting in an unacceptable effect. The CMC and CCC are just two of the six parts of a aquatic life criterion; the other four parts are the acute averaging period, chronic averaging period, acute frequency of allowed exceedence, and chronic frequency of allowed exceedence. Because 304(a) aquatic life criteria are national guidance, they are intended to be protective of the vast majority of the aquatic communities in the United States.

2. Criteria Recommendations for Priority Pollutants, Non Priority Pollutants and Organoleptic Effects

This compilation lists all priority toxic pollutants and some non priority toxic pollutants, and both human health effect and organoleptic effect criteria issued pursuant to CWA § 304(a). Blank spaces indicate that EPA has no CWA § 304(a) criteria recommendations. For a number of non-priority toxic pollutants not listed, CWA § 304(a) ''water + organism'' human health criteria are not available, but, EPA has published MCLs under the SDWA that may be used in establishing water quality standards to protect water supply designated uses. Because of variations in chemical nomenclature systems, this listing of toxic pollutants does not duplicate the listing in Appendix A of 40 CFR Part 423. Also listed are the Chemical Abstracts Service CAS registry numbers, which provide a unique identification for each chemical.

3. Human Health Risk

The human health criteria for the priority and non priority pollutants are based on carcinogenicity of 10^{-6} risk. Alternate risk levels may be obtained by moving the decimal point (e.g., for a risk level of 10–5, move the decimal point in the recommended criterion one place to the right).

4. Water Quality Criteria Published Pursuant to Section 304(a) or Section 303(c) of the CWA

Many of the values in the compilation were published in the proposed California Toxics Rule (CTR, 62 FR 42160). Although such values were published pursuant to Section 303(c) of the CWA, they represent the Agency's most recent calculation of water quality criteria and thus are published today as the Agency's 304(a) criteria. Water quality criteria published in the proposed CTR may be revised when EPA takes final action on the CTR.

5. Calculation of Dissolved Metals Criteria

The 304(a) criteria for metals, shown as dissolved metals, are calculated in one of two ways. For freshwater metals criteria that are hardness-dependent, the dissolved metal criteria were calculated using a hardness of 100 mg/l as $CaCO_3$ for illustrative purposes only. Saltwater and freshwater metals' criteria that are not hardness-dependent are calculated by multiplying the total recoverable criteria before rounding by the appropriate conversion factors. The final dissolved metals' criteria in the table are rounded to two significant figures. Information regarding the calculation of hardness dependent conversion factors are included in the footnotes.

6. Correction of Chemical Abstract Services Number

The Chemical Abstract Services number (CAS) for Bis(2-Chloroisopropyl) Ether, has been corrected in the table. The correct CAS number for this chemical is 39638–32–9. Previous publications listed 108–60–1 as the CAS number for this chemical.

7. Maximum Contaminant Levels

The compilation includes footnotes for pollutants with Maximum Contaminant Levels (MCLs) more stringent than the recommended water quality criteria in the compilation. MCLs for these pollutants are not included in the compilation, but can be found in the appropriate drinking water regulations (40 CFR 141.11–16 and 141.60–63), or can be accessed through the Safe Drinking Water Hotline (800–426–4791) or the Internet (http://www.epa.gov/ost/tools/dwstds-s.html).

8. Organoleptic Effects

The compilation contains 304(a) criteria for pollutants with toxicity-based criteria as well as non-toxicity based criteria. The basis for the non-toxicity based criteria are organoleptic effects (e.g., taste and odor) which would make water and edible aquatic life unpalatable but not toxic to humans. The table includes criteria for organoleptic effects for 23 pollutants. Pollutants with organoleptic effect criteria more stringent than the criteria based on toxicity (e.g., included in both the priority and non-priority pollutant tables) are footnoted as such.

9. Category Criteria

In the 1980 criteria documents, certain recommended water quality criteria were published for categories of pollutants rather than for individual pollutants within that category. Subsequently, in a series of separate actions, the Agency derived criteria for specific pollutants within a category. Therefore, in this compilation EPA is replacing criteria representing categories with individual pollutant criteria (e.g., 1,3-dichlorobenzene, 1,4-dichlorobenzene and 1,2-dichlorobenzene).

10. Specific Chemical Calculations

A. Selenium

(1) Human Health

In the 1980 Selenium document, a criterion for the protection of human health from consumption of water and organisms was calculated based on a BCF of 6.0 L/kg and a maximum water-related contribution of 35 μg Se/day. Subsequently, the EPA Office of Health and Environmental Assessment issued an errata notice (February 23, 1982), revising the BCF for selenium to 4.8 L/kg. In 1988, EPA issued an addendum (ECAO–CIN–668) revising the human health criteria for selenium. Later in the final National Toxic Rule (NTR, 57 FR 60848), EPA withdrew previously published selenium human health criteria, pending Agency review of new epidemiological data.

This compilation includes human health criteria for selenium, calculated using a BCF of 4.8 L/kg along with the current IRIS RfD of 0.005 mg/kg/day. EPA included these recommended water quality criteria in the compilation because the data necessary for calculating a criteria in accordance with EPA's 1980 human health methodology are available.

(2) Aquatic Life

This compilation contains aquatic life criteria for selenium that are the same as those published in the proposed CTR. In the CTR, EPA proposed an acute criterion for selenium based on the criterion proposed for selenium in the Water Quality Guidance for the Great Lakes System (61 FR 58444). The GLI and CTR proposals take into account data showing that selenium's two most prevalent oxidation states, selenite and selenate, present differing potentials for aquatic toxicity, as well as new data indicating that various forms of selenium are additive. The new approach produces a different selenium acute criterion concentration, or CMC, depending upon the relative proportions of selenite, selenate, and other forms of selenium that are present.

EPA notes it is currently undertaking a reassessment of selenium, and expects the 304(a) criteria for selenium will be revised based on the final reassessment (63 FR 26186). However, until such time as revised water quality criteria for selenium are published by the Agency, the recommended water quality criteria in this compilation are EPA's current 304(a) criteria.

B. 1,2,4-Trichlorobenzene and Zinc

Human health criteria for 1,2,4-trichlorobenzene and zinc have not been previously published. Sufficient information is now available for calculating water quality criteria for the protection of human health from the consumption of aquatic organisms and the consumption of aquatic organisms and water for both these compounds. Therefore, EPA is publishing criteria for these pollutants in this compilation.

C. Chromium (III)

The recommended aquatic life water quality criteria for chromium (III) included in the compilation are based on the values presented in the document titled: 1995 Updates: Water Quality Criteria Documents for the Protection of Aquatic Life in Ambient Water, however, this document contains criteria based on the total recoverable fraction. The chromium (III) criteria in this compilation were calculated by applying the conversion factors used in the Final Water Quality Guidance for the Great Lakes System (60 FR 15366) to the 1995 Update document values.

D. Ether, Bis (Chloromethyl), Pentachlorobenzene, Tetrachlorobenzene 1,2,4,5- Trichlorophenol

Human health criteria for these pollutants were last published in EPA's Quality Criteria for Water 1986 or ''Gold Book''. Some of these criteria were calculated using Acceptable Daily Intake (ADIs) rather than RfDs. Updated q1*s and RfDs are now available in IRIS for ether, bis (chloromethyl), pentachlorobenzene, tetrachlorobenzene 1,2,4,5-, and trichlorophenol, and were used to revise the water quality criteria for these compounds. The recommended water quality criteria for ether, bis (chloromethyl) were revised using an updated q1*, while criteria for pentachlorobenzene, and tetrachlorobenzene 1,2,4,5-, and trichlorophenol were derived using an updated RfD value.

E. PCBs

In this compilation EPA is publishing aquatic life and human health criteria based on total PCBs rather than individual arochlors. These criteria replace the previous criteria for the seven individual arochlors. Thus, there are criteria for a total of 102 of the 126 priority pollutants.

Dated: October 26, 1998.

J. Charles Fox,

Assistant Administrator, Office of Water.

Appendix A—Conversion Factors for Dissolved Metals

Metal	Conversion factor freshwater CMC	Conversion factor freshwater CCC	Conversion factor saltwater CMC	Conversion factor saltwater CCC
Arsenic	1.000	1.000	1.000	1.000
Cadmium	1.138672-[(ln hardness)(0.041838)]	1.101672-[(ln hardness)(0.041838)]	0.994	0.994
Chromium III	0.316	0.860		
Chromium VI	0.982	0.962	0.993	0.993
Copper	0.960	0.960	0.83	0.83
Lead	1.46203-[(ln hardness)(0.145712)]	1.46203-[(ln hardness)(0.145712)]	0.951	0.951
Mercury	0.85	0.85	0.85	0.85
Nickel	0.998	0.997	0.990	0.990
Selenium			0.998	0.998
Silver	0.85		0.85	
Zinc	0.978	0.986	0.946	0.946

Appendix B—Parameters for Calculating Freshwater Dissolved Metals Criteria That Are Hardness-Dependent

Chemical	m_A	b_A	m_C	b_C	Freshwater conversion factors (CF)	
					Acute	Chronic
Cadmium	1.128	−3.6867	0.7852	−2.715	1.136672-[ln (hardness)(0.041838)]	1.101672-[ln (hardness)(0.041838)]
Chromium III	0.8190	3.7256	0.8190	0.6848	0.316	0.860
Copper	0.9422	−1.700	0.8545	−1.702	0.960	0.960
Lead	1.273	−1.460	1.273	−4.705	1.46203-[ln (hardness)(0.145712)]	1.46203-[ln (hardness)(0.145712)]
Nickel	0.8460	2.255	0.8460	0.0584	0.998	0.997
Silver	1.72	−6.52			0.85	
Zinc	0.8473	0.884	0.8473	0.884	0.978	0.986

Appendix C—Calculation of Freshwater Ammonia Criterion

1. The one-hour average concentration of total ammonia nitrogen (in mg N/L) does not exceed, more than once every three years on the average, the CMC calculated using the following equation:

$$CMC = \frac{0.275}{1+10^{7.204-pH}} + \frac{39.0}{1+10^{pH-7.204}}$$

In situations where salmonids do not occur, the CMC may be calculated using the following equation:

$$CMC = \frac{0.411}{1+10^{7.204-pH}} + \frac{58.4}{1+10^{pH-7.204}}$$

2. The thirty-day average concentration of total ammonia nitrogen (in mg N/L) does not exceed, more than once every three years on the average, the CCC calculated using the following equation:

$$CCC = \frac{0.0858}{1+10^{7.688-pH}} + \frac{3.70}{1+10^{pH-7.688}}$$

[FR Doc. 98–30272 Filed 12–4–98; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Monday
December 7, 1998

Part V

Department of Justice

Bureau of Prisons

28 CFR Part 545

Inmate Work and Performance Pay Program: Work Evaluation; Final Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 545

[BOP–1078–F]

RIN 1120–AA74

Inmate Work and Performance Pay Program: Work Evaluation

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document the Bureau of Prisons is amending its regulations on inmate work and performance pay to allow for quarterly rather than monthly evaluations of inmates whose work performance is above average. This amendment is intended to streamline institution operations.

EFFECTIVE DATE: December 7, 1998.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its regulations on inmate work and performance pay. A final rule on this subject was published in the **Federal Register** on October 1, 1984 (49 FR 38915) and was amended May 21, 1991 (56 FR 23478), July 10, 1991 (56 FR 31531), January 4, 1996 (61 FR 379).

Provisions for inmate work assignment evaluation are contained in § 545.26(e). These provisions are being revised to allow for quarterly work evaluations for inmates who receive above average ratings for their performance. Inmates who receive average or below average ratings will continue to receive monthly work evaluations.

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined not to constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB. After review of the law and regulations, the Director, Bureau of Prisons certifies that this rule, for the purpose of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), does not have a significant economic impact on a substantial number of small entities, within the meaning of the Act. Because this rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, its economic impact is limited to the Bureau's appropriated funds.

Because this amendment merely streamlines institution management operations by foregoing unnecessary work evaluations, the Bureau finds good cause for exempting it from the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date. Members of the public may submit comments concerning this rule by writing to the previously cited address. These comments will be considered but will receive no response in the **Federal Register**.

List of Subjects in 28 CFR Part 545

Prisoners.

Kathleen Hawk Sawyer,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 545 in subchapter C of chapter V of 28 CFR is amended as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 545—WORK AND COMPENSATION

1. The authority citation for 28 CFR part 545 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3013, 3571, 3572, 3621, 3622, 3624, 3663, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4126, 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. In § 545.26, paragraph (e) is revised to read as follows:

§ 545.26 Performance pay provisions.

* * * * *

(e) *Work evaluation.* (1) At the end of each month the work detail/program supervisor shall compute the hours worked by the inmate and the pay to be awarded for that month.

(2) An inmate shall receive performance pay only for those hours during which the inmate is actively participating in a work assignment or an education/vocational program.

(3) The work detail/program supervisor shall rate the inmate's performance in each of several categories on a monthly basis when the inmate's work performance is average or below average or on a quarterly basis when the inmate's work performance is above average. For example, an inmate may be rated in such categories as quality of work, quantity of work, initiative, ability to learn, dependability, response to supervision and instruction, safety and care of equipment, ability to work with others, and overall job proficiency. Any exception to the work performance evaluation procedures cited in this paragraph requires approval of the Assistant Director, Correctional Programs Division, Central Office. The work detail/program supervisor shall review the evaluation with the inmate. The supervisor shall request that the inmate sign the evaluation form. If the inmate refuses to sign the form, the supervisor shall note this refusal on the evaluation and, if known, the reasons for refusal.

* * * * *

[FR Doc. 98–32358 Filed 12–4–98; 8:45 am]

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Federal Register

Monday
December 7, 1998

Part VI

Environmental Protection Agency

40 CFR Parts 262, 264, 265, and 270
Project XL Rulemaking for New York State Public Utilities; Hazardous Waste Management System; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 262, 264, 265, and 270

[FRL–6197–7]

Project XL Rulemaking for New York State Public Utilities; Hazardous Waste Management System

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for comment on proposed rule and draft final project agreement.

SUMMARY: Today's proposed rule would provide regulatory flexibility under the Resource Conservation and Recovery Act (RCRA), as amended. It would allow participating New York State Utilities to accumulate hazardous waste, which they generate at remote locations, at designated Utility-owned central collection facilities (UCCFs) for up to 90 days subject to specified hazardous waste generator requirements. EPA is proposing this rule to implement an XL project for Utilities in New York State. The terms of the XL project are defined in the draft Final Project Agreement (FPA) on which EPA is also requesting comments. The draft FPA explains the project in detail, while the proposed rule would enable New York State Department of Environmental Conservation (NYSDEC) to implement portions of the project requiring regulatory authorization.

In order to qualify for the flexibility that the proposed rule, if adopted, would provide, New York State Utilities must initiate and comply with public notice and participation requirements set forth in the rule regarding the designation and approval of UCCFs. Subsequent to these public participation procedures, Utilities must receive authorization from EPA to participate in the flexibility provided by this proposed rule. This proposed rule is intended to provide regulatory changes to implement this XL project. The agency expects this XL project to result in superior environmental performance in New York State, while providing cost savings to participating Utilities.

DATES: Public Comments: Comments on the proposed rule and/or FPA must be received on or before January 6, 1999.

Public Hearing: Commenters may request a public hearing during the public comment period. Commenters requesting a public hearing should specify the basis for their request. If EPA determines that there is sufficient reason to hold a public hearing, it will do so after the public comment period. Requests for a public hearing should be submitted to the address below. If a public hearing is scheduled, the date, time, and location will be announced in the **Federal Register**.

ADDRESSES: Written comments and requests for a hearing should be mailed to the RCRA Information Center Docket Clerk (5305G), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Please send an original and two copies of all comments, and refer to Docket Number F–98–NYSP–FFFFF. A copy should also be sent to Mr. Philip Flax at U.S. Environmental Protection Agency, Region 2, 290 Broadway, New York, NY 10007–1866.

Viewing Docket Materials: A docket containing public comments and supporting materials is available for public inspection and copying at the RCRA Information Center (RIC), located at Crystal Gateway, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. The RIC is open from 9:00am to 4:00pm Monday through Friday, excluding federal holidays. The public is encouraged to phone in advance to review docket materials. Appointments can be scheduled by phoning the Docket Office at (703) 603–9230. Refer to RCRA docket number F–98–NYSP–FFFFF. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost 15 cents per page.

A duplicate copy of the docket is available for inspection and copying at U.S. EPA, Region 2, 290 Broadway, New York, NY 10007–1866 during normal business hours. Persons wishing to view the duplicate docket at the New York location are encouraged to contact Mr. Philip Flax in advance, by telephoning (212) 637–4143. Information is also available on the world wide web at http://www.epa.gov/ProjectXL.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Flax, U.S. EPA, Region 2, 290 Broadway, New York, NY 10007–1866, (212) 637–4143.

SUPPLEMENTARY INFORMATION:

Outline of Today's Document

The information presented in this preamble is organized as follows:

I. Authority

These regulations are being proposed under the authority of sections 2002(a), 3001, 3002, 3004, 3005, 3006, 3010, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6921, 6922, 6924, 6925, 6926, 6930, and 6974.

II. Background

A. Overview of Project XL

The draft FPA sets forth the intentions of EPA and the NYSDEC with regard to a project developed under Project XL, an EPA initiative to allow regulated entities to achieve better environmental results at less cost. The regulation would facilitate implementation of the project. Project XL—''eXcellence and Leadership''was announced on March 16, 1995, as a central part of the National Performance Review and the EPA's effort to reinvent environmental protection. See 60 FR 27282 (May 23, 1995). Project XL provides a limited number of private and public regulated entities an opportunity to develop their own pilot projects to provide regulatory flexibility that will result in environmental protection that is superior to what would be achieved through compliance with current and reasonably anticipated future regulations. These efforts are crucial to EPA's ability to test new strategies that reduce the regulatory burden and promote economic growth while achieving better environmental and public health protection. EPA intends to evaluate the results of this and other XL projects to determine which specific elements of the project(s), if any, should be more broadly applied to other regulated entities for the benefit of both the economy and the environment.

Under Project XL, participants in four categories—facilities, industry sectors, governmental agencies and communities—are offered the flexibility to develop common sense, cost-effective strategies that will replace or modify

specific regulatory requirements, on the condition that they produce and demonstrate superior environmental performance. To participate in Project XL, applicants must develop alternative pollution reduction strategies pursuant to eight criteria: superior environmental performance; cost savings and paperwork reduction; local stakeholder involvement and support; test of an innovative strategy; transferability; feasibility; identification of monitoring, reporting and evaluation methods; and avoidance of shifting the risk burden. They must have full support of affected federal, state and tribal agencies to be selected.

For more information about the XL criteria, readers should refer to the two descriptive documents published in the **Federal Register** (60 FR 27282, May 23, 1995 and 62 FR 19872, April 23, 1997), and the December 1, 1995 ''Principles for Development of Project XL Final Project Agreements'' document. For further discussion as to how the NYSDEC XL project addresses the XL criteria, readers should refer to the draft Final Project Agreement and fact sheet that are available from the docket for this action (see **ADDRESSES** section of today's preamble).

Project XL is intended to allow the EPA to experiment with untried, potentially promising regulatory approaches, both to assess whether they provide benefits at the specific facility affected, and whether they should be considered for wider application. Such pilot projects allow the EPA to proceed more quickly than would be possible when undertaking changes on a nationwide basis. EPA may modify rules, on a site-or state-specific basis, that represent one of several possible policy approaches within a more general statutory directive, so long as the alternative being used is permissible under the statute.

Adoption of such alternative approaches or interpretations in the context of a given XL project does not, however, signal EPA's willingness to adopt that interpretation as a general matter, or even in the context of other XL projects. It would be inconsistent with the forward-looking nature of these pilot projects to adopt such innovative approaches prematurely on a widespread basis without first determining whether or not they are viable in practice and successful for the particular projects that embody them. Furthermore, as EPA indicated in announcing the XL program, it expects to adopt only a limited number of carefully selected projects. These pilot projects are not intended to be a means for piecemeal revision of entire programs. Depending on the results in these projects, EPA may or may not be willing to consider adopting the alternative approach or interpretation again, either generally or for other specific facilities.

EPA believes that adopting alternative policy approaches and/or interpretations, on a limited, site-or state-specific basis and in connection with a carefully selected pilot project, is consistent with the expectations of Congress about EPA's role in implementing the environmental statutes (so long as EPA acts within the discretion allowed by the statute). Congress' recognition that there is a need for experimentation and research, as well as ongoing reevaluation of environmental programs, is reflected in a variety of statutory provisions, e.g., Section 8001 of RCRA.

B. Overview of the NYSDEC XL Project

1. Introduction

EPA is today requesting comments on the draft FPA and proposing a rule to implement key provisions of this Project XL initiative. Today's proposed rule would facilitate implementation the draft FPA (the document that embodies EPA's intent to implement this project) that has been developed by EPA, New York State Department of Environmental Conservation (NYSDEC), New York State Utilities, and other stakeholders. After comments on the draft FPA have been considered, EPA and NYSDEC expect to sign a final FPA. The draft FPA is available for review in the docket for today's action and on the world wide web at http://www.epa.gov/ProjectXL. The draft FPA addresses the eight Project XL criteria, and the expectation of EPA that this XL project will meet those criteria. Those criteria are: (1) Environmental performance superior to what would be achieved through compliance with current and reasonably anticipated future regulations; (2) cost savings or economic opportunity, and/or decreased paperwork burden; (3) stakeholder support; (4) test of innovative strategies for achieving environmental results; (5) approaches that could be evaluated for future broader application; (6) technical and administrative feasibility; (7) mechanisms for monitoring, reporting, and evaluation; and (8) consistency with Executive Order 12898 on Environmental Justice (avoidance of shifting of risk burden). The draft FPA specifically addresses the manner in which the project is expected to produce superior environmental benefits.

2. NYSDEC XL Project Description

Utilities maintain rights-of-way, such as oil and gas pipelines, telephone lines, and electric power distribution systems, in some cases extending hundreds of miles. Frequently, hazardous waste is generated at remote locations that are not continuously staffed. The generation ''events'' are sometimes planned in advance, but often are not, particularly in cases where there has been a sudden, unexpected interruption of service. Waste may also be generated as part of routine service. This waste is generally generated as a result of sediments accumulating at Utility access points.

In the case of electric power and telephone systems, the locations involved are usually transformer vaults, service boxes, and manholes, which are most often located in the middle of public roads. In order to access conduits and service the system, sediment and/or infiltration water must be removed. These materials commonly fail the Toxicity Characteristic (TC) for lead and may be hazardous waste. For electric power systems, polychlorinated biphenyl (PCB) contamination is also possible. Waste containing PCBs is regulated under the Toxic Substances Control Act (TSCA). In the case of oil and gas pipelines, the waste may consist of pipeline condensate which collects in ''drip'' pipes downstream of pressure regulating stations. This waste commonly exhibits the characteristic of ignitability, commonly fails the TC for benzene and may contain PCBs.

Generally, hazardous waste may qualify for conditional exemption under RCRA because it is generated in quantities less than 100 kilograms per calendar month. However, when hazardous waste generated exceeds 1000 kilograms per calendar month, it is subject to applicable regulations at 40 CFR Part 262. In addition, when one kilogram or more of an acutely hazardous waste is generated per calendar month at a remote location, it is also subject to applicable regulations at 40 CFR Part 262.

Utilities are currently allowed to accumulate hazardous waste without a permit at the remote location where it is generated for up to 90 (or, under certain circumstances, 180 days) days without RCRA permits prior to transporting it to a permitted treatment, storage and disposal facility (TSDF) or other designated facility. However, since remote Utility locations are often unstaffed, it is very difficult to store hazardous waste and secure against releases resulting from accidents or vandalism. Arranging for a commercial transporter to bring hazardous waste

directly to a TSDF may take several days, particularly if the event was unplanned. To effectively and adequately protect public health, safety, and the environment, it would be preferable if hazardous waste generated at remote locations could be transported to a secured location as soon as possible upon completion of the generation event.

RCRA regulations generally do not allow the shipment to, or consolidation of, hazardous waste at off-site facilities other than a permitted or interim status TSDF or other designated facility. Furthermore, for each remote location that generates more than 1,000 kilograms during any single month, the utility must prepare and submit a Biennial Report. The RCRA-authorized state processes each report and enters the data into state databases, and EPA enters it into the Biennial Report System (BRS) database. As a result, both state and federal databases may include hundreds of ''sites'' which are actually only drip pipes and/or manholes.

Additionally, utilities must arrange frequent shipments of small loads of hazardous waste which must be sent directly to a permitted TSDF. The current handling of hazardous waste from remote locations may result in unsafe storage and hazardous conditions, additional paperwork and expenditure of time and labor, and inefficiencies in transportation, increasing direct costs.

Utilities would prefer to have hazardous waste transported immediately from remote locations to a UCCF to which the remote locations are connected by a right-of-way, such as a pipeline, that the Utility controls. At such secured locations, the Utilities would then accumulate this waste in accordance with specified hazardous waste generator requirements. These requirements would allow up to 90 days to safely consolidate similar waste from different remote locations without RCRA permits to achieve important efficiencies in transportation and waste management. To the extent that wastes arriving at the UCCF on different dates are consolidated in the same container, the 90-day period would run from the earlier of the two dates that the wastes arrived. The proposed rule would allow vehicles transporting waste from a UCCF to a commercial TSDF to carry relatively full loads. On the other hand, if hazardous waste must be transported to a TSDF directly from remote locations, more vehicle trips would be required, each carrying smaller loads.

This proposed rule would avoid the problems of unsafe storage, transportation inefficiencies, and unnecessary paperwork by allowing alternative handling for hazardous waste generated at remote locations by Utilities. If the proposed rule is adopted, EPA expects the following to occur:

1. Chemically similar hazardous waste can be consolidated without a RCRA permit for up to 90 days at a UCCF, in compliance with specified requirements set forth in today's proposed rule. Each UCCF would only handle waste generated at its remote locations. The waste would be removed from each remote location immediately. If wastes arriving at the UCCF on different dates are consolidated in the same container, the 90-day period would run from the earlier of the two dates that the wastes arrived.

2. Waste generated at remote locations can be accounted for in a combined Biennial Report, submitted by the UCCF, instead of requiring the submission of a Biennial Report for each remote location.

Thus, today's proposed rule would allow participating New York State Utilities to accumulate hazardous waste, which they generate at remote locations and remove immediately, at designated UCCFs without RCRA permits for up to 90 days subject to specified requirements.

Under the proposed rule a UCCF would be able to accumulate hazardous waste received from remote locations at the UCCF for up to 90 days, thereby allowing time for consolidation of wastes that are chemically similar. The requirements applicable to the UCCF would include all requirements currently applicable to 90-day on-site accumulation, plus certain additional requirements specific to this project. A UCCF may prepare a single Biennial Report for waste received from its associated remote locations. A separate Biennial Report must be prepared for any shipment of hazardous waste sent directly to a permitted TSDF that would ordinarily require a Biennial Report.

In order to participate in the flexibility provided by the proposed rule, New York State Utilities must initiate and comply with public notice and participation requirements set forth in the rule regarding the designation(s) and approval of UCCF(s). Subsequent to these public participation procedures, Utilities must receive authorization from EPA to participate in the flexibility provided by this proposed rule. EPA may determine that a Utility or UCCF should not be authorized to participate in the relief afforded by the proposed rule based on anything learned before, during or after the public notice procedures, including a Utility's compliance history.

The proposed rule would enhance the protection of public health and the environment by facilitating and requiring the immediate removal of hazardous waste that is difficult to properly secure at remote locations. Such waste would be required by the terms of the proposed rule to be moved to the UCCF for consolidation immediately after the generation event is ended. Hazardous traffic conditions that endanger public safety may also diminish.

Utilities would realize considerable savings in direct costs through efficiencies in transportation by consolidating hazardous waste. Reducing the number of trips made by waste-transporting vehicles also reduces mobile source emissions. Elimination of the need to complete biennial reports would bring about a very significant reduction in paperwork and savings in time and labor, both for Utilities and environmental regulatory agencies, who can then redirect such resources to other environmental needs.

In addition, the proposed rule would require Utilities to reinvest at least one-third of the direct savings realized from participation in the XL project into one or more environmental projects, such as pollution prevention, that are over and above existing legal requirements and that have not been initiated prior to the Utility's authorization to manage hazardous waste pursuant to the rule.

The proposed rule applies only to the storage, transport, and disposal of waste generated at a Utility's remote locations and sent to a designated UCCF; the proposed rule would not apply to waste received by the UCCF from locations other than those defined as remote locations. In addition, except as explicitly provided for in the proposed rule, the rule would not affect any other requirements pertaining to the storage, transport, and disposal of waste generated at a Utility's remote locations. For example, a Utility would still be required to determine whether waste generated at a remote location is subject to the land disposal restrictions set forth in 40 CFR part 268 and the Toxic Substances Control Act and its implementing regulations set forth in 40 CFR part 761 at the point of generation, prior to any commingling of waste. In addition, nothing in the proposed rule prohibits a Utility from treating hazardous waste in an accumulation tank or container pursuant to the provisions set forth in 262.90 provided the Utility complies with the requirements for tanks set forth in Subpart J of 40 CFR part 265, except §§ 265.197(c) and 265.200, and/or the

requirements for containers set forth in Subpart I of 40 CFR part 265.

Similarly, it is not the intent of the proposed rule to expand the size of the regulated universe nor to subject uniquely managed waste to increased regulation. Therefore, whether a Utility designates UCCFs or not, waste generated at individual remote locations that does not exceed 100 kilograms in a calendar month will continue to be subject to the requirements for Conditionally Exempt Small Quantity Generators (CESQG) at 40 CFR 261.5.

3. Environmental Benefits

This XL project would allow hazardous waste, generated by Utilities at ''remote'' locations that are not permanently staffed, to be transported to a secured location that may not be a permitted TSDF immediately after the generation event is ended. At the present time, particularly when the generation event is unplanned, it may take several days to make arrangements for removal of the material directly to a TSDF. In the meantime, if the material remains at the remote location, it may endanger public health and the environment because it may be difficult for the Utility to provide secure storage for the material, safe from releases through accidents or vandalism. Moreover, if the material is left at a street location where it continues to disrupt normal traffic patterns (vehicular and/or pedestrian), public safety is threatened, even if there are no releases. Particularly in urban settings (e.g., New York City), the disruption of traffic patterns can lead to a substantial risk of vehicular collisions or vehicle/pedestrian accidents. Leaving the material at a street location may result in forced merging of high-volume traffic lanes. This project should help to enhance public safety and prevent endangerment to human health and the environment.

There would also be direct environmental results to be realized from the consolidation of similar waste at UCCFs. By minimizing the number of vehicle trips that must be made to the ultimate TSDF, emissions from mobile sources are reduced, as well as vehicular fuel consumption and the possibility of an accident involving a vehicle transporting this waste.

Indirect environmental benefits would result from the reduced need for human resources, time and paperwork. More Utility and regulatory agency resources would be made available to address high-priority environmental issues.

In addition, participating Utilities would reinvest one-third of the direct cost savings accrued due to participation in this project into one or more environmentally beneficial projects that are above and beyond what is legally required by law and that were not planned prior to the initiation of this XL project. Participating Utilities would identify, in annual Progress Reports, the monetary value of the direct cost savings which they have experienced as a result of the project and the environmental activities in which one-third of these direct cost savings have been reinvested.

4. Economic Benefits

Utilities would realize direct cost savings. Through the need for reduced resources, time and paperwork, they also anticipate indirect savings. NYSDEC and EPA would realize indirect savings through reduced resource demands, time saved (including computer time), and reduced paperwork.

Utilities could realize a variety of direct cost savings. First, Utilities would not incur expenses for having to store hazardous waste at remote locations, even temporarily. Second, Utilities would realize direct cost savings through efficiencies in transportation. By being able to consolidate waste at the UCCF that is chemically similar, fewer vehicle trips to ultimate destination facilities would be required. Third, Utilities could avoid the costs of having to secure hazardous waste facility permits for facilities that receive hazardous waste for short-term management from remote locations. And fourth, the proposed rule would subject the UCCFs to specified generator requirements (rather than TSDF requirements). These savings may include: database management for each remote location as an individual generator, State annual Hazardous Waste Report preparation costs, Biennial Report preparation costs, Part B permit application costs, closure plan preparation costs, P.E. certification of closure, financial assurance costs, annual state TSDF operating fee, TSDF corrective action liability costs, and cost savings realized from consolidation of waste for economical shipment.

Utilities would realize indirect savings in resources, time, and reduced paperwork by not having to submit Biennial Reports for remote locations that generate in excess of 1,000 kilograms of hazardous waste during the generation event. Instead, the hazardous waste generated at remote locations would be included in the Biennial Reports of the UCCFs to which they are brought. All such hazardous waste would still be fully accounted for without increasing the number of Biennial Reports that the Utility must prepare and submit. EPA would also realize indirect savings in human resources, time (including computer time), and reduced paperwork. Biennial Reports for remote locations would no longer need to be processed and entered in federal databases. As long as the quantities and types of hazardous waste from these locations are accounted for, the minimal benefits of these excess reports do not justify the extra work involved in preparing and processing the reports.

In addition to the savings reaped from eliminating Biennial Reports for remote locations, NYSDEC is considering eliminating its State annual Hazardous Waste Reports for remote locations. Should NYSDEC eliminate these reports, the savings discussed above would apply to that change as well.

5. Stakeholder Involvement

NYSDEC and EPA have been involved in the development of this project, and both support it. Bell Atlantic acted as lead for the telephone industry. Consolidated Edison acted as lead for the electric power industry, with assistance from the New York State Power Pool. Brooklyn Union Gas acted as lead for the oil and gas pipeline industry (intrastate and interstate). Consolidated Edison and the New York State Power Pool solicited comments from other electric power companies in New York State which were then funneled through Consolidated Edison. Brooklyn Union Gas provided the same service to other intrastate and interstate oil and gas pipelines.

The development of the draft FPA was accomplished through implementation of a Public Participation and Outreach Plan, which is included in the docket for this proposed rulemaking. This Plan provided opportunity for participation by potential industrial participants, environmental organizations, the general public and other interested parties. The proposed rule and draft FPA also provide for public participation in the designation and approval of UCCFs by participating Utilities, subsequent to the signing of the Final Project Agreement and the effective date of the proposed rule.

EPA is today soliciting comments on both the proposed rule and the draft FPA. Commentators may request a public hearing during the public comment period. If EPA determines that there is a basis to hold a public hearing, it will do so after the public comment period.

Finally, since the proposed regulations modify regulations originally promulgated pursuant to RCRA, the NYSDEC intends to propose and (subject to public comment) promulgate an equivalent state regulation.

6. Project Duration and Completion

As with all XL projects testing alternative environmental protection strategies, the term of the NYSDEC XL project is one of limited duration. The duration of the regulatory relief provided by this rule is anticipated to be 60 months from the effective date of this rule. However, EPA may suspend or terminate the regulatory relief provided to the Utilities or a specific Utility or UCCF at any time.

C. Rule Description

The proposed rule would add a new section to the Standards Applicable to Generators of Hazardous Waste, 40 CFR part 262. Paragraph (a) of the proposed rule would define terms used in the new rule. The definition of remote location in paragraph (a)(3) is of particular interest because of its importance in the implementation of the regulation. Paragraph (b) would include the requirements that a Utility and UCCF would comply with in order to accumulate hazardous waste for up to 90 days at the UCCF. Utilities and UCCFs must follow these requirements in order to accumulate hazardous waste at UCCF's. For example, under proposed § 262.90(b)(1), the utility would be required to use a Uniform Hazardous Waste Manifest (Form 8700–22) for all shipments of hazardous waste greater than 100 kilograms being sent from a remote location to a UCCF. The manifest used to transport hazardous waste from the remote location to the UCCF would be prepared as follows:

(1) The EPA ID # of the UCCF would be entered on the Manifest Form in Item 1.

(2) The name and location of the remote location would be entered in the Generator's Name and Mailing Address block (Item 3).

(3) The transporter's name and EPA ID number would be entered in the Transporter 1 Company Name box (Items 5 and 6) .

(4) The UCCF name would be entered in the Designated Facility Name and Site Address (Item 9) as the facility which will be handling the waste described on the manifest.

(5) The DOT description and other information about the waste would be entered in Items 11 through 14.

(6) The Generator's Certification (Item 16) would be signed.

(7) The Transporters Acknowledgment of Receipt (Item 18) would be signed.

(8) The person accepting the waste on behalf of the UCCF would sign the Certification of receipt of hazardous materials covered by this manifest (Item 20).

(9) A copy of the manifest, signed by all required signatories, must be retained at the UCCF for a minimum of three years. A copy of the manifest must also be provided to the transporter, if other than the utility.

The utility would also complete a new manifest in accordance with 40 CFR 262.20, for all hazardous waste transported to a TSDF from the UCCF.

Paragraph (c) of the proposed rule would require public notification of a Utility's and UCCF's participation. These requirements ensure that there is adequate public notice and comment on participation. Paragraph (d) includes items that need to be included in a notification of participation that would be sent to EPA Region II. Paragraph (e) would describe the procedures for designating UCCFs, including how information from the public comments will be incorporated in the authorization process. Paragraph (f) would include requirements for the addition or deletion of UCCFs from participation. Paragraph (g) would include the requirements for an Annual Progress Report that Utilities would have to submit to EPA, including information on the number of remote locations and savings reaped from participation. Paragraph (h) would set forth examples of the direct savings that a Utility would receive as a result of participation. Paragraph (i) would discuss grounds for termination of a Utility or UCCF's participation. Paragraph (j) would set forth the expiration date of the rule. Amendments to Parts 264, 265, and 270 would clarify that a Utility that opted to participate under 40 CFR 262.90 would be exempt from TSDF and permitting requirements.

III. Additional Information

A. Public Hearing

After the close of the public comment period, EPA may decide to hold a public hearing regarding this proposed rule if a commenter requests such a hearing and provides a basis for holding such a hearing. EPA may also decide to hold a public hearing on its own initiative. Any public hearing will comply with 42 U.S.C. 7004(b)(1); 40 CFR Part 25. A verbatim transcript of the public hearing, and written statements provided at the hearing will be available for inspection and copying during normal business hours at the EPA addresses for docket inspection given in the **ADDRESSES** section of this preamble.

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993) EPA must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''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 in State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs of the rights and obligations of recipients thereof; or

((4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Because the annualized cost of this proposed rule would be significantly less than $100 million and would not meet any of the other criteria specified in the Executive Order, it has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866, and is therefore not subject to OMB review.

Executive Order 12866 also encourages agencies to provide a meaningful public comment period, and suggests that in most cases the comment period should be 60 days. However, in consideration of the very limited scope of today's rulemaking and the considerable public involvement in the development of the draft FPA, the EPA considers 30 days to be sufficient in providing a meaningful public comment period for today's action.

C. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an Agency to conduct a Regulatory Flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. EPA believes that in determining whether a

rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the required analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed [or final] rule on small entities.'' 5 U.S.C. 603 and 604. Thus, EPA may certify as not having a significant economic impact on a substantial number of small entities rules that relieve regulatory burden, or otherwise have a positive economic effect on the small entities subject to the rule. EPA has concluded that today's proposed rule will relieve regulatory burden for all types of entities, including any affected small entities. Further, today's rule does not impose any requirements on any utility unless the utility opts to participate and receives authority to participate. Therefore, EPA certifies today's rule is unlikely to have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No.1755.03, OMB Control No. 2010–0026) and a copy may be obtained from Sandy Farmer by mail at OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460, by e-mail at farmer.sandy@epamail.epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the internet at http://www.epa.gov/icr.

EPA is collecting information regarding the locations and amount of waste involved as well as the money saved and what the savings was invested in. EPA plans to use this information to determine whether the XL project is successful. The success of the project will help determine whether it should be extended to other areas of the country. Participation in the project is voluntary; however, if a Utility decides to participate, EPA requires the filing of a report containing pertinent information. These reports will be publicly available. The estimated cost burden of filing the annual report is $10,000 and the estimated length of time to prepare the report is 40 hours. The estimated number of respondents is 15. 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.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. EPA will amend the table in 40 CFR part 9 of currently approved ICR control numbers issued by OMB for various regulations to list the information requirements, if any, contained in the final rule.

Comments are requested 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. Send comments on the ICR to the Director, OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after December 7, 1998, a comment to OMB is best assured of having its full effect if OMB receives it by January 6, 1999. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA''), Public Law 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 of 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.

As noted above, this rule is applicable only to New York State Utilities. The EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. EPA has also determined that this rule does not contain a federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

F. RCRA/HSWA

1. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified states to administer and enforce the RCRA program for hazardous waste within the state. (See 40 CFR Part 271 for the standards and requirements for authorization.) States with final authorization administer their own hazardous waste programs in lieu of the

federal program. Following authorization, EPA retains enforcement authority under sections 3008, 7003 and 3013 of RCRA, although authorized states have primary enforcement responsibility.

After authorization, rules written under RCRA provisions that predate the Hazardous and Solid Waste Amendments of 1984 (HSWA) no longer apply in the authorized state. New federal requirements imposed by those rules do not take effect in an authorized state until the state adopts the requirements as state law.

In contrast, under section 3006(g) of RCRA, new requirements and prohibitions imposed by HSWA take effect in authorized states at the same time they take effect in nonauthorized states. EPA is directed to carry out those requirements and prohibitions in authorized states until the state is granted authorization to do so.

2. Effect on New York State Authorization

Today's proposed rule, if finalized, would be promulgated pursuant to RCRA, rather than HSWA. New York State has received authority to administer most of the RCRA program; thus, authorized provisions of the State's hazardous waste program are administered in lieu of the federal program. New York State has received authority to administer hazardous waste standards for generators. As a result, if today's proposed rule is finalized, it would not be effective in New York State until the State adopts equivalent requirements as State law. It is EPA's understanding that subsequent to the promulgation of this rule, New York State intends to propose a rule containing equivalent provisions. EPA may not enforce these requirements until it approves the State requirements as a revision to the authorized State program.

G. Applicability of Executive Order 13045

The Executive Order, ''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 EO 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because it does not involve decisions on environmental health or safety risks that may disproportionately affect children.

H. Executive Order 12875: Enhancing Intergovernmental Partnerships

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, E.O. 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 proposed 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 Executive Order 12875 do not apply to this rule.

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, E.O. 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 proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

J. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Pub L. 104–113, Section 12(d) (15 U.S.C. 272 note) 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 standard. This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

List of Subjects

40 CFR Part 262

Environmental protection, Hazardous materials transportation, Hazardous waste, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 264

Environmental protection, Hazardous waste, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 265

Environmental protection, Hazardous waste, Packaging and containers,

Reporting and recordkeeping requirements.

40 CFR Part 270

Environmental protection, Hazardous waste, Recordkeeping requirements.

Dated: November 30, 1998.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, parts 262, 264, 265, and 270 of title 40 of the Code of Federal Regulations are proposed to be amended as follows:

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

1. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922–6925, 6937, and 6938.

2. Subpart I consisting of § 262.90 is added to read as follows:

262.90 Project XL for Public Utilities in New York State.

(a) The following definitions apply to this section:

(1) A *Utility* is any company that operates wholesale and/or retail oil and gas pipelines, or any company that provides electric power or telephone service and is regulated by New York State's Public Service Commission or the New York Power Authority.

(2) A *right-of-way* is a fixed, integrated network of aboveground or underground conveyances, including land structures, fixed equipment, and other appurtenances, controlled or owned by a Utility, and used for the purpose of conveying its products or services to customers.

(3) A remote location is a location in New York State within a Utility's right-of-way network that is not permanently staffed.

(4) *A Utility's central collection facility* (UCCF) is a Utility-owned facility within the Utility's right-of-way network to which hazardous waste, generated by the Utility at its remote locations, is brought for storage and, if necessary, waste analysis.

(b) A UCCF designated pursuant to paragraph (e) of this section may accumulate hazardous waste (with the exception of mixed waste) generated by that Utility at its remote locations for up to 90 days without a permit or without having interim status, provided that:

(1) The Utility complies with all applicable requirements for generators in 40 CFR Part 262 (except § 262.34 (d) through (f)) for hazardous waste generated at its remote locations and at the UCCF, including the manifest and pretransport requirements for all shipments greater than 100 kilograms sent from a remote location to a UCCF.

(2) The Utility removes the hazardous waste from the remote location immediately after the generation event has ended.

(3) The Utility complies with all applicable requirements for transporters in 40 CFR Part 263 for each shipment of hazardous waste greater than 100 kilograms which is sent from remote location to the UCCF, and all applicable Department of Transportation requirements.

(4) All hazardous waste generated at each remote location and shipped to the UCCF is accumulated at the UCCF in accordance with 40 CFR 262.34 (a) through (c), regardless of the total quantity generated or accumulated per calendar month.

(5) The Utility submits a biennial report in accordance with 40 CFR 262.41 including all hazardous waste shipped from remote locations to the UCCF. This UCCF biennial report may be submitted in lieu of submitting a biennial report for each remote location. However, for hazardous waste generated at a particular remote location that exceeds 1000 kg per calendar month and that is not sent to the UCCF, the Utility must submit a separate biennial report.

(6) Waste generated at a remote location that is not sent to a UCCF is managed according to the requirements of Parts 260 through 270 of this chapter.

(7) The Utility maintains records at the UCCF in accordance with all the recordkeeping requirements set forth in Subpart D of 40 CFR part 262, including 40 CFR 262.40, and maintains records on any PCB test results for hazardous wastes brought to the facility from remote locations.

(8) The UCCF obtains an EPA identification number.

(9) The UCCF receives hazardous waste only from a remote location.

(10) The Utility reinvests at least one-third of the direct savings described in paragraph (h) of this section in one or more environmentally beneficial projects, such as remediation or pollution prevention, that are over and above existing legal requirements and that have not been initiated prior to the Utility's authorization to manage hazardous waste pursuant to this section.

(c) Utilities seeking to have UCCFs designated under paragraph (e) of this section must comply with the following requirements:

(1) Any New York State Utility seeking authority to accumulate hazardous waste under this section must notify local governments and communities of the Utility's intent to designate specific UCCFs.

(2) In carrying out paragraph (c)(1) of this section, the Utility must solicit public comment. In soliciting public comment, the Utility must use the notice method set forth in paragraph (c)(2)(i) of this section, as well as at least two of the methods set forth in paragraphs (c)(2)(ii) through (vii) of this section.

(i) A public notice in a newspaper of general circulation within the area in which each proposed UCCF is located;

(ii) A radio announcement in each affected community during peak listening hours;

(iii) Mailings to all citizens within a five-mile radius of proposed UCCF;

(iv) Well-publicized community meetings;

(v) Presentations to the local community board;

(vi) Placement of copies of this section and the Final Project Agreement that explains the regulatory relief outlined in this section in the local library nearest the proposed UCCF, and inclusion of the name and address of the library in the newspaper notice; and

(vii) Placement of copies of this section and the Final Project Agreement that explains the regulatory relief outlined in this section on the Utility's web site, and inclusion of the web site's address in the newpaper notice.

(3) All outreach efforts made under paragraph (e)(2) of this section shall be prepared in English (and any other language spoken by a large number of persons in the community of concern) and at a minimum shall include the following information:

(i) A brief description of the XL project, the intended new use of the facility, and a request for comments on the proposed UCCF.

(ii) The name, if any, and address of the proposed UCCF and its current status under the RCRA Subtitle C program.

(iii) The intended duration of use of the UCCF under the requirements of this section.

(iv) Names, addresses, and telephone numbers of contact persons, representing the Utility, to whom questions or comments may be directed.

(v) Notification of when the comment period of no less than 30 days will close.

(4) The Utility must submit copies of each notice, announcement or mailing directly to local governments and to the EPA officials identified in paragraph (d) of this section.

(5) At the close of the comment period, the Utility shall prepare a

Responsiveness Package containing a summary of public outreach efforts, all comments and questions received as a result of its outreach efforts, and the Utility's written responses to all comments and questions. The Utility shall provide copies of its Responsiveness Package to any citizens that participated in the public notice process, local governments and the EPA officials identified in paragraph (d) of this section.

(d) Upon completion of the public notice procedures described in paragraph (c) of this section, the Utility must provide written notice to the Director, Division of Enforcement and Compliance Assistance at EPA-Region II of its intent to participate. The Notice of Intent must contain the following information:

(1) The name of the Utility, corporate address, and corporate mailing address, if different.

(2) The name, mailing address, and telephone number of a corporate-level contact person to whom communications and inquiries may be directed. This contact person may be changed by notifying EPA.

(3) A list of the names, addresses, and EPA identification numbers of all Utility-owned facilities in New York State that are proposed UCCFs and the names and telephone numbers of a designated contact person at each facility.

(4) A summary of public outreach efforts undertaken pursuant to paragraph (c) of this section.

(5) A commitment that one-third of the direct cost savings outlined in paragraph (h) of this section due to project participation will be reinvested in one or more environmentally beneficial projects which are over and above existing legal requirements and which have not been initiated prior to the Utility's authorization to manage hazardous waste pursuant to this section.

(6) An acknowledgment that the signatory is personally familiar with the terms and conditions of this section and has the authority to obligate and does obligate the Utility to comply with all such terms and conditions. The Utility shall comply with the signatory requirements set forth in 40 CFR 270.11(a)(1).

(e) The procedures for designating UCCFs are as follows:

(1) Subject to paragraphs (e) (2) through (4) of this section, the Utility and specified UCCF shall be authorized to comply with the requirements set forth in paragraph (b) of this section upon the receipt of written acknowledgment from EPA that the Notice of Intent described in paragraph (d) of this section has been received and found to be complete and in compliance with all the requirements set forth in paragraph (d) of this section. This acknowledgment will state whether the UCCF has been designated under this section.

(2) Based on information provided and comments received during or after the public notice and comment period, designated UCCFs may be rejected for the proposed use, or, if EPA determines that acceptance for the proposed use under the conditions of paragraph (b) of this section may not fully protect human health and the environment based on the Utility's compliance history or other appropriate factors, the acknowledgment may impose conditions in addition to those in paragraph (b) of this section.

(3) If EPA determines that a site-specific informational public meeting is warranted prior to determining the acceptability of a designated UCCF, the acknowledgment will so state.

(4) Subsequent to any public meeting, EPA may reject or prohibit UCCFs from participating in this project based on information provided or comments received during or after the public notice process or based on a determination that acceptance for the proposed use under the conditions of paragraph (b) of this section may not fully protect human health and the environment based on the Utility's compliance history or other appropriate factors.

(f) At any time, a Utility may add or remove UCCF designations by complying with the following requirements:

(1) A Utility may notify EPA of its intent to designate additional UCCFs. Such a notification shall be submitted to, and processed by, EPA, in the manner indicated in paragraphs (d) and (e) of this section.

(2) To have one or more additional UCCFs designated, the Utility must comply with paragraph (c) of this section.

(3) A Utility can discontinue use of a facility as a UCCF by notifying EPA in writing.

(g) Each Utility authorized to accumulate hazardous waste pursuant to this section shall submit an Annual Progress Report with the following information for the preceding year:

(1) The number of remote locations statewide for which hazardous waste was handled in accordance with paragraph (b) of this section.

(2) The total tonnage of hazardous waste generated at such remote locations statewide.

(3) The number of remote locations statewide that generated in excess of l,000 kilograms of hazardous waste during a generation event.

(4) The number of remote locations statewide that generated between l00 and l,000 kilograms of hazardous waste during a generation event.

(5) An estimate of the monetary value, on a Utility-wide basis, of the direct savings realized by participation in this project. Direct savings at a minimum include those outlined in paragraph (h) of this section.

(6) Descriptions of the environmental compliance, remediation, or pollution prevention projects or activities into which the savings, described in paragraph (h) of this section, have been reinvested, with an estimate of the savings reinvested in each. Any such projects must consist of activities that are over and above existing legal requirements and that have not been initiated prior to the Utility's authorization to manage hazardous waste pursuant to this section.

(7) The addresses and EPA identification numbers for all facilities that served as UCCFs for hazardous waste from remote locations.

(h) Utilities authorized to accumulate hazardous waste pursuant to this section must assess the direct savings realized as a result. Cost estimates shall include direct savings based on relief from any of the following requirements which the facility expects to be relieved from due to compliance with the provisions of this section:

(1) Database management for each remote location as an individual generator;

(2) Biennial Report preparation costs;

(3) Part B permit application costs;

(4) Closure plan preparation costs;

(5) P.E. certification of closure;

(6) Financial assurance costs;

(7) Annual state TSD operating fee;

(8) TSD corrective action liability costs (e.g.—RFA preparation, etc.); and/or

(9) Cost savings realized from consolidation of waste for economical shipment (including no longer shipping waste directly to a TSD from remote locations)

(i) If any UCCF or Utility authorized under this section fails to comply with any of the requirements of this section, EPA may terminate or suspend the UCCF's or Utility's authorization. EPA will provide a UCCF or Utility with 15 days written notice of its intent to terminate or suspend authorization. During this period, the UCCF will have the opportunity to come back into compliance or provide a written explanation as to why it was not in

compliance with the terms of this section and how it will come back into compliance. If EPA then issues a written notice terminating or suspending authorization, the Utility must take immediate action to come into compliance with all otherwise applicable federal requirements. EPA or NYSDEC may also take enforcement action against a Utility for non-compliance with the provisions of this section.

(j) This section will expire on [DATE FIVE YEARS FROM EFFECTIVE DATE OF FINAL RULE].

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

2. Section 264.1 is amended by adding paragraph (g)(12) to read as follows:

§ 264.1 Purpose, scope and applicability.

* * * * *

(g) * * *

(12) A New York State Utility central collection facility accumulating hazardous waste in accordance with 40 CFR 262.90.

* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6906, 6912, 6922, 6923, 6924, 6925, 6935, 6936 and 6937.

2. Section 265.1 is amended by adding paragraph (c)(15) to read as follows:

§ 265.1 Purpose, scope, and applicability.

* * * * *

(c) * * *

(15) A New York State Utility central collection facility accumulating hazardous waste in accordance with 40 CFR 262.90.

* * * * *

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

1. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

2. Section 270.1 is amended by adding paragraph (c)(2)(ix) to read as follows:

§ 270.1 Purpose and scope of these regulations.

* * * * *

(c) * * *

(2) * * *

(ix) A New York State Utility central collection facility accumulating hazardous waste in accordance with 40 CFR 262.90.

* * * * *

[FR Doc. 98–32425 Filed 12–4–98; 8:45 am]

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FEDERAL REGISTER PAGES AND DATES, DECEMBER

CFR PARTS AFFECTED DURING DECEMBER

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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- Pesticide worker protection standards; respirator designations; published 12-7-98

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  - Reformulated gasoline program; alternative analytical test methods and specifications for mixing chamber associated with animal toxicity testing; comments due by 12-17-98; published 11-17-98

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LIST OF PUBLIC LAWS

Note: The list of Public Laws for the second session of the 105th Congress has been completed and will resume when bills are enacted into law during the first session of the 106th Congress, which convenes on January 6, 1999.

A cumulative list of Public Laws for the second session of the 105th Congress was published in the **Federal Register** on November 30, 1998.

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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102–200	(869–034–00158–9)	15.00	July 1, 1998
201–End	(869–034–00160–2)	13.00	July 1, 1998
42 Parts:			
1–399	(869–032–00160–0)	32.00	Oct. 1, 1997
400–429	(869–032–00161–8)	35.00	Oct. 1, 1997
430–End	(869–032–00162–6)	50.00	Oct. 1, 1997
43 Parts:			
1–999	(869–032–00163–4)	31.00	Oct. 1, 1997
1000–end	(869–032–00164–2)	50.00	Oct. 1, 1997
44	(869–032–00165–1)	31.00	Oct. 1, 1997
45 Parts:			
1–199	(869–032–00166–9)	30.00	Oct. 1, 1997
200–499	(869–032–00167–7)	18.00	Oct. 1, 1997
500–1199	(869–032–00168–5)	29.00	Oct. 1, 1997
1200–End	(869–032–00169–3)	39.00	Oct. 1, 1997
46 Parts:			
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41–69	(869–032–00171–5)	22.00	Oct. 1, 1997
70–89	(869–032–00172–3)	11.00	Oct. 1, 1997
90–139	(869–032–00173–1)	27.00	Oct. 1, 1997
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47 Parts:			
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period July 1, 1996 to June 30, 1997. The volume issued July 1, 1996, should be retained.

[5] No amendments to this volume were promulgated during the period January 1, 1997 through December 31, 1997. The CFR volume issued as of January 1, 1997 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 1997, through April 1, 1998. The CFR volume issued as of April 1, 1997, should be retained.