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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–308–AD; Amendment 39–10982; AD 97–20–01 R1]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that currently requires repetitive inspections to detect cracks, corrosion, or damage of the lower spar fitting body and lug, and corrective actions, if necessary. That AD also provides for optional terminating action for the repetitive inspection requirements. That AD was prompted by reports that fatigue cracking was found in the lower spar fitting lug on the number 3 pylon and in the lower spar fitting body. The actions specified by that AD are intended to detect and correct such fatigue cracking, which could result in failure of the strut and separation of the engine from the airplane. This amendment references additional service bulletins for accomplishment of the optional replacement, and clarifies that accomplishment of certain AD's terminates the repetitive inspections.

DATES: Effective February 11, 1999.

The incorporation by reference of certain publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of October 7, 1997 (62 FR 49431, September 22, 1997).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tamara L. Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2771; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by revising AD 97–20–01, amendment 39–10139 (62 FR 49431, September 22, 1997), which is applicable to certain Boeing Model 747 series airplanes, was published in the **Federal Register** on April 3, 1998 (63 FR 16449). That action proposed to continue to require repetitive inspections to detect cracks, corrosion, or damage of the lower spar fitting body and lug, and corrective actions, if necessary. The action also proposed to provide for optional terminating action for the repetitive inspection requirements.

Comments

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

Support for the Proposal

Two commenters support the proposed rule.

Requests To Withdraw the Proposal

Two commenters state that the proposed revision of AD 97–20–01 is not necessary because the intent of the revision was approved previously by the FAA under the ''global'' alternative method of compliance (AMOC) 97–120S–743, which was issued to Boeing on November 12, 1997, and under Boeing letter B–T113–97–5439, dated November 5, 1997.

The FAA infers from these remarks that the commenters request that the proposed AD be withdrawn. The FAA does not concur. Although the FAA agrees that the intent of the proposed revision to AD 97–20–01 is the same as the previously referenced AMOC for that AD, the FAA has determined that the revision to that AD is necessary. First, the revision clarifies the requirements for any future operators who may not be aware of an existing AMOC. Second, any non-U.S. registered airplanes that are subsequently placed on the U.S. Register will be required to comply with the revision to AD 97–20–01. In addition, the revision will assist FAA principal maintenance inspectors in determining compliance with the final rule. In light of these factors, the FAA considers it necessary to issue the final rule. Paragraph (c)(2) has been added to the final rule to clarify that AMOC's, approved previously in accordance with AD 97–20–01, are approved as AMOC's with the requirements of this AD.

Conclusion

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

Cost Impact

There are approximately 367 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 152 airplanes of U.S. registry will be affected by this AD, that it will take approximately 19 work hours per airplane to accomplish the required inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspections required by this AD on U.S. operators is estimated to be $173,280, or $1,140 per airplane, per inspection cycle.

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

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and

responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10139 (62 FR 49431, September 22, 1997) and by adding a new airworthiness directive (AD), amendment 39–10982, to read as follows:

97–20–01 R1 Boeing: Amendment 39–10982. Docket 97–NM–308–AD. Revises AD 97–20–01, Amendment 39–10139.

Applicability: Model 747 series airplanes, having line numbers 1 through 500 inclusive, equipped with Pratt & Whitney Model JT9D–3, –7, or –7Q engines, or having line numbers 202, 204, 232, or 257, equipped with General Electric Model CF6 series engines; certificated in any category; and on which the strut/wing modification has not been accomplished in accordance with either of the following AD's:

- AD 95–10–16, amendment 39–9233 (60 FR 27008, May 22, 1995), or
- AD 95–13–07, amendment 39–9287 (60 FR 33336, June 28, 1995).

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking in the lower spar fitting lug or the lower spar fitting body, which could result in failure of the strut and separation of the engine from the airplane, accomplish the following:

(a) Within 90 days after October 7, 1997 (the effective date of AD 97–20–01, amendment 39–10139) perform a detailed visual inspection and an ultrasonic inspection to detect cracks, corrosion, or damage of the lower spar fitting body and lug, as applicable, in accordance with Figures 9 and 10 of Boeing Service Bulletin 747–54–2062, Revision 8, dated August 21, 1997.

Note 2: This AD does not require an inspection of the inboard strut-to-diagonal brace attach fitting as described in Figure 1 of Boeing Service Bulletin 747–54–2062, Revision 8, dated August 21, 1997. However, this inspection is required to be accomplished as part of AD 95–20–05, amendment 39–9383 (60 FR 51705, October 10, 1995).

(1) If no crack, corrosion, or damage is detected, repeat the detailed visual and ultrasonic inspections thereafter at intervals not to exceed 400 landings.

(2) If any crack, corrosion, or damage is detected, prior to further flight, accomplish either paragraph (a)(2)(i) or (a)(2)(ii) of this AD.

(i) Replace the lower spar fitting with a new steel lower spar fitting, in accordance with Part II of the Accomplishment Instructions of the service bulletin. Or

(ii) Modify the nacelle strut and wing structure in accordance with AD 95–10–16, amendment 39–9233 (60 FR 27008, May 22, 1995), or AD 95–13–07, amendment 39–9287 (60 FR 33336, June 28, 1995).

(b) Replacement of the lower spar fitting with a new steel lower spar fitting, in accordance with Part II of the Accomplishment Instructions of any of the following service bulletins listed below, or accomplishment of modification of the nacelle strut and wing structure required by AD 95–10–16, amendment 39–9233 (60 FR 27008, May 22, 1995), or AD 95–13–07, amendment 39–9287 (60 FR 33336, June 28, 1995); constitutes terminating action for the repetitive inspection requirements of this AD.

- Boeing Service Bulletin 747–54–2062, Revision 1, dated November 13, 1980;
- Boeing Service Bulletin 747–54–2062, Revision 2, dated March 19, 1981;
- Boeing Service Bulletin 747–54–2062, Revision 3, dated August 28, 1981;
- Boeing Service Bulletin 747–54–2062, Revision 4, dated June 30, 1982;
- Boeing Service Bulletin 747–54–2062, Revision 5, dated June 1, 1984;
- Boeing Service Bulletin 747–54–2062, Revision 6, dated October 2, 1986;
- Boeing Service Bulletin 747–54–2062, Revision 7, dated December 21, 1994;
- Boeing Service Bulletin 747–54–2062, Revision 8, dated August 21, 1997.

(c)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 97–20–01, are approved as alternative methods of compliance with the requirements of this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

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

(e) Certain actions shall be done in accordance with Boeing Service Bulletin 747–54–2062, Revision 8, dated August 21, 1997. The incorporation by reference of this document was approved previously by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of October 7, 1997 (62 FR 49431, September 22, 1997). Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on February 11, 1999.

Issued in Renton, Washington, on December 30, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–186 Filed 1–6–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–264–AD; Amendment 39–10984; AD 98–11–04 R1]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100 and –200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This amendment corrects information in an existing airworthiness directive (AD), applicable to all Boeing Model 737–100 and –200 series airplanes, that currently requires that the FAA-approved maintenance inspection program be revised to include inspections that will give no less than the required damage tolerance rating for each Structural Significant Item, and repair of cracked structure. The actions specified in that AD are intended to ensure the continued structural integrity of the entire Boeing Model 737–100 and –200 fleet. This amendment corrects the requirements of the current AD by allowing operators not to change their programs if they determine that the existing inspections are effective for the new or affected SSI. This amendment is prompted by a review of the requirements of the existing AD.

DATES: Effective June 23, 1998.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of June 23, 1998 (63 FR 27465, May 19, 1998).

FOR FURTHER INFORMATION CONTACT: Greg Schneider, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Washington; telephone (425) 227–2028; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On May 12, 1998, the FAA issued AD 98–11–04, amendment 39–10531 (63 FR 27465, May 19, 1998), which is applicable to all Boeing Model 737–100 and –200 series airplanes. That AD requires that the FAA-approved maintenance inspection program be revised to include inspections that will give no less than the required damage tolerance rating for each Structural Significant Item (SSI), and repair of cracked structure. That action was prompted by a structural re-evaluation by the manufacturer which identified additional structural elements where, if damage were to occur, supplemental inspections may be required for timely detection. The actions required by that AD are intended to ensure the continued structural integrity of the entire Boeing Model 737–100 and –200 fleet.

AD 98–11–04 contains provisions regarding when operators must revise their maintenance or inspection program to address SSI's that are created or affected by repairs and design changes. As discussed in the preamble to the final rule, the FAA intended that such revisions be made only if a damage tolerance assessment indicates that such a change is necessary because existing inspections are ineffective for the SSI. Paragraph (d)(1) of the AD, applicable to repairs and design changes accomplished prior to the effective date of the AD, properly states the FAA's intent. However, the FAA inadvertently omitted a comparable provision in paragraph (g), which applies to repairs and design changes accomplished after the effective date of the AD. As adopted, paragraph (g) requires that operators revise their maintenance programs following repairs and design changes, regardless of whether a damage tolerance assessment indicates that the existing applicable inspection continue to be effective. Therefore, consistent with the FAA's intent, this correction is necessary to allow operators not to change their programs if they determine that the existing inspections are effective for the new or affected SSI.

Action is taken herein to correct these requirements of AD 98–11–04 and to correctly add the AD as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The final rule is being reprinted in its entirety for the convenience of affected operators. The effective date remains June 23, 1998.

Since this action only corrects a current requirement, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary.

List of Subjects in 14 CFR Part 39

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

Adoption of the Correction

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10531 (63 FR 27465, May 19, 1998), and by adding a new airworthiness directive (AD), amendment 39–10984, to read as follows:

98–11–04 R1 Boeing: Amendment 39–10984. Docket 96–NM–264–AD. Revises AD 98–11–04, Amendment 39–10531.

Applicability: All Model 737–100 and –200 series airplanes (including Model 737–200C series airplanes), certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure the continued structural integrity of the entire Boeing Model 737–100 and –200 fleet:

Note 1: Where there are differences between the AD and the Supplemental Structural Inspection Document, the AD prevails.

(a) For airplanes listed in Section 3.0 of Boeing Document No. D6–37089, ''Supplemental Structural Inspection Document'' (SSID), Revision B, dated February 18, 1987, and Revision C, dated January 1990: Within 12 months after August 9, 1991 (the effective date of AD 91–14–20, amendment 39–7061), incorporate a revision into the FAA-approved maintenance inspection program which provides no less than the required damage tolerance rating (DTR) for each Structural Significant Item (SSI) listed in that document. (The required DTR value for each SSI is listed in the document.) The revision to the maintenance program shall include and shall be implemented in accordance with the procedures in Sections 5.0 and 6.0 of the SSID. This revision shall be deleted following accomplishment of the requirements of paragraph (b) of this AD.

Note 2: For the purposes of this AD, an SSI is defined as a principal structural element that could fail and consequently reduce the structural integrity of the airplane.

(b) Prior to reaching the threshold specified in paragraph (c) of this AD, or within 12 months after the effective date of this AD, whichever occurs later, incorporate a revision into the FAA-approved maintenance or inspection program that provides no less than the required DTR for each SSI listed in Boeing Document No. D6–37089, ''Supplemental Structural Inspection Document'' (SSID), Revision D, dated June 1995 (hereinafter referred to as ''Revision D''). (The required DTR value for each SSI is listed in the document.) Except as provided to the contrary in paragraphs (c), (d), and (g) of this AD, the revision to the maintenance or inspection program shall include and shall be implemented in accordance with the procedures in Section 5.0, ''Damage Tolerance Rating (DTR) System Application''

and Section 6.0, ''SSI Discrepancy Reporting'' of Revision D. Upon incorporation of the revision required by this paragraph, the revision required by paragraph (a) of this AD may be deleted.

(c) Except as provided in paragraph (d), (e), or (g) of this AD, perform an inspection to detect cracks in all structure identified in Revision D at the time specified in paragraph (c)(1) or (c)(2) of this AD, as applicable.

(1) For Model 737–200C series airplanes: Inspect prior to the accumulation of 46,000 total flight cycles, or within 4,000 flight cycles measured from the date 12 months after the effective date of this AD, whichever occurs later.

Note 3: The requirements specified in paragraph (c)(1) of this AD only apply to airplanes listed as 737–200C on the type certificate data sheet. Paragraph (c)(1) does not apply to airplanes that have been modified from a passenger configuration to an all-cargo configuration by supplemental type certificate (STC). Paragraphs (c)(2) and (d) apply to those airplanes.

(2) For all airplanes, except for those airplanes identified in paragraph (c)(1) of this AD: Inspect prior to the accumulation of 66,000 total flight cycles, or within 4,000 flight cycles measured from the date 12 months after the effective date of this AD, whichever occurs later.

Note 4: Notwithstanding the provisions of paragraphs 5.1.1, 5.1.2, 5.1.6(e), 5.1.11, 5.1.12, 5.1.13, 5.2, 5.2.1, 5.2.2, 5.2.3, and 5.2.4 of the General Instructions of Revision D, which would permit operators to perform fleet and rotational sampling inspections, to perform inspections on less than whole airplane fleet sizes and to perform inspections on substitute airplanes, this AD requires that all airplanes that exceed the threshold be inspected in accordance with Revision D.

Note 5: Once the initial inspection has been performed, operators are required to perform repetitive inspections at the intervals specified in Revision D in order to remain in compliance with their maintenance or inspection programs, as revised in accordance with paragraph (b) of this AD.

(d) For airplanes on which the structure identified in Revision D has been physically altered in accordance with an STC prior to the effective date of this AD: Accomplish the requirements specified in paragraph (d)(1) or (d)(2) of this AD.

(1) Within 18 months after the effective date of this AD, assess the damage tolerance characteristics of each SSI created or affected by each STC to determine the effectiveness of the applicable Revision D inspection for each SSI and, if not effective, revise the FAA-approved maintenance or inspection program to include an inspection method for each new or affected SSI, and to include the compliance times for initial and repetitive accomplishment of each inspection. Following accomplishment of the revision and within the compliance times established, perform an inspection to detect cracks in the structure affected by any design change or repair, in accordance with the new inspection method. The new inspection method and the compliance times shall be approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note 6: For purposes of this AD, an SSI is ''affected'' if it has been physically altered or repaired, or if the loads acting on the SSI have been increased or redistributed. The effectiveness of the applicable inspection method and compliance time should be determined based on a damage tolerance assessment methodology, such as that described in FAA Advisory Circular AC No. 91–56, Change 2, dated April 15, 1983.

(2) Accomplish paragraphs (d)(2)(i), (d)(2)(ii), and (d)(2)(iii) of this AD.

(i) Within 18 months after the effective date of this AD, submit a plan that describes a methodology for accomplishing the requirements of paragraph (d)(1) of this AD to the Manager, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; fax (425) 227–1181.

Note 7: The plan should include a detailed description of the: STC; methodology for identifying new or affected SSI's; method for developing loads and validating the analysis; methodology for evaluating and analyzing the damage tolerance characteristics of each new or affected SSI; and proposed inspection method. The plan would not need to include all of these elements if the operator can otherwise demonstrate that its plan will enable the operator to comply with paragraph (d)(2)(iii) of this AD.

(ii) Within 18 months after the effective date of this AD, perform a detailed visual inspection in accordance with a method approved by the Manager, Seattle ACO to detect cracks in all structure identified in Revision D that has been altered by an STC.

(A) If no crack is detected, repeat the detailed visual inspection thereafter at intervals not to exceed 18 months.

(B) If any crack is detected, prior to further flight, repair it in accordance with a method approved by the Manager, Seattle ACO.

(iii) Within 48 months after the effective date of this AD, revise the FAA-approved maintenance or inspection program to include an inspection method for each new or affected SSI, and to include the compliance times for initial and repetitive accomplishment of each inspection. The inspection methods and the compliance times shall be approved by the Manager, Seattle ACO. Accomplishment of the actions specified in this paragraph constitutes terminating action for the repetitive inspection requirements of paragraph (d)(2)(ii)(A) of this AD.

Note 8: Notwithstanding the provisions of paragraphs 5.1.17 and 5.1.18 of the General Instructions of Revision D, which would permit deletions of modified, altered, or repaired structure from the SSIP, the inspection of SSI's that are modified, altered, or repaired shall be done in accordance with a method approved by the Manager, Seattle ACO.

(e) For airplanes on which the structure identified in Revision D has been repaired or physically altered by any design change other than an STC identified in paragraph (d), prior to the effective date of this AD: At the time of the first inspection of each SSI after the effective date of this AD in accordance with Revision D, identify each repair or design change to that SSI. Within 12 months after such identification, assess the damage tolerance characteristics of each SSI created or affected by each repair or design change to determine the effectiveness of the applicable SSID inspection for each SSI and, if not effective, revise the FAA-approved maintenance or inspection program to include an inspection method and compliance times for each new or affected SSI. The new inspection method and the compliance times shall be approved by the Manager, Seattle ACO.

Note 9: For the purposes of this AD, a design change is defined as any modification, alteration, or change to operating limitations.

(f) Except as provided in paragraph (d)(2)(ii)(B) of this AD, cracked structure found during any inspection required by this AD shall be repaired, prior to further flight, in accordance with an FAA-approved method.

(g) For airplanes on which the structure identified in Revision D is affected by any design change (including STC's) or repair that is accomplished after the effective date of this AD: Within 12 months after that modification, alteration, or repair, assess the damage tolerance characteristics of each SSI created or affected by each repair or design change to determine the effectiveness of the applicable SSID inspection for each SSI and, if not effective, revise the FAA-approved maintenance or inspection program to include an inspection method and compliance times for each new or affected SSI, and to include the compliance times for initial and repetitive accomplishment of each inspection. The new inspection method and the compliance times shall be approved by the Manager, Seattle ACO.

Note 10: Notwithstanding the provisions of paragraphs 5.1.17 and 5.1.18 of the General Instructions of Revision D, which would permit deletions of modified, altered, or repaired structure from the SIP, the inspection of SSI's that are modified, altered, or repaired shall be done in accordance with a method approved by the Manager, Seattle ACO.

(h) Before any airplane that is subject to this AD and that has exceeded the applicable compliance times specified in paragraph (c) of this AD can be added to an air carrier's operations specifications, a program for the accomplishment of the inspections required by this AD must be established in accordance with paragraph (h)(1) or (h)(2) of this AD, as applicable.

(1) For airplanes that have been inspected in accordance with this AD, the inspection of each SSI must be accomplished by the new operator in accordance with the previous operator's schedule and inspection method, or the new operator's schedule and inspection method, whichever would result in the earlier accomplishment date for that SSI inspection. The compliance time for accomplishment of this inspection must be measured from the last inspection accomplished by the previous operator. After each inspection has been performed once, each subsequent inspection must be

performed in accordance with the new operator's schedule and inspection method.

(2) For airplanes that have not been inspected in accordance with this AD, the inspection of each SSI required by this AD must be accomplished either prior to adding the airplane to the air carrier's operations specification, or in accordance with a schedule and an inspection method approved by the Manager, Seattle ACO. After each inspection has been performed once, each subsequent inspection must be performed in accordance with the new operator's schedule.

(i)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 11: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 91–14–20, amendment 39–7061, are not considered to be approved as alternative methods of compliance with this AD.

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

(k) The actions specified in paragraphs (b) and (c) shall be done in accordance with Boeing Document No. D6–37089, ''Supplemental Structural Inspection Document'' (SSID), Revision D, dated June 1995, which contains the following list of effective pages:

Page number shown on page	Revision level shown on page
List of Effective Pages ..... Pages 1 thru 10	D

(**Note:** The issue date of Revision D is indicated only on the title page; no other page of the document is dated.). This incorporation by reference was approved previously by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of June 23, 1998 (63 FR 27465, May 19, 1998). Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(l) The effective date of this amendment remains June 23, 1998.

Issued in Renton, Washington, on December 30, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–184 Filed 1–6–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–263–AD; Amendment 39–10983; AD 98–11–03 R1]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This amendment corrects information in an existing airworthiness directive (AD), applicable to certain Boeing Model 727 series airplanes, that currently requires that the FAA-approved maintenance inspection program be revised to include inspections that will give no less than the required damage tolerance rating for each Structural Significant Item (SSI), and repair of cracked structure. The actions specified in that AD are intended to ensure the continued structural integrity of the entire Boeing Model 727 fleet. This amendment corrects the requirements of the current AD by allowing operators not to change their programs if they determine that the existing inspections are effective for the new or affected SSI. This amendment is prompted by a review of the requirements of the existing AD.

DATES: Effective June 23, 1998.

The incorporation by reference of a certain publication, as listed in the regulations, was approved previously by the Director of the Federal Register as of June 23, 1998 (63 FR 27455, May 19, 1998).

FOR FURTHER INFORMATION CONTACT: Walter Sippel, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Washington; telephone (425) 227–2774; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On May 12, 1998, the FAA issued AD 98–11–03, amendment 39–10530 (63 FR 27455, May 19, 1998), which is applicable to certain Boeing Model 727 series airplanes. That AD requires that the FAA-approved maintenance inspection program be revised to include inspections that will give no less than the required damage tolerance rating for each Structural Significant Item (SSI), and repair of cracked structure. That action was prompted by a structural re-evaluation by the manufacturer that identified additional structural elements where, if damage were to occur, supplemental inspections may be required for timely detection. The actions required by that AD are intended to ensure the continued structural integrity of the entire Boeing Model 727 fleet.

AD 98–11–03 contains provisions regarding when operators must revise their maintenance or inspection program to address SSI's that are created or affected by repairs and design changes. As discussed in the preamble to the final rule, the FAA intended that such revisions be made only if a damage tolerance assessment indicates that such a change is necessary because existing inspections are ineffective for the SSI. Paragraph (d)(1) of the AD, applicable to repairs and design changes accomplished prior to the effective date of the AD, properly states the FAA's intent. However, the FAA inadvertently omitted a comparable provision in paragraph (g), which applies to repairs and design changes accomplished after the effective date of the AD. As adopted, paragraph (g) requires that operators revise their maintenance programs following repairs and design changes, regardless of whether a damage tolerance assessment indicates that the existing applicable inspection continue to be effective. Therefore, consistent with the FAA's intent, this correction is necessary to allow operators not to change their programs if they determine that the existing inspections are effective for the new or affected SSI.

Action is taken herein to correct these requirements of AD 98–11–03 and to correctly add the AD as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The final rule is being reprinted in its entirety for the convenience of affected operators. The effective date remains June 23, 1998.

Since this action only corrects a current requirement, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary.

List of Subjects in 14 CFR Part 39

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

Adoption of the Correction

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10530 (63 FR 27455, May 19, 1998), and by adding a new airworthiness directive (AD), amendment 39–10983, to read as follows:

98–11–03 R1 Boeing: Amendment 39–10983. Docket 96–NM–263–AD. Revises AD 98–11–03: Amendment 39–10530.

Applicability: All Model 727 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure the continued structural integrity of the entire Boeing Model 727 fleet, accomplish the following:

Note 1: Where there are differences between the AD and the Supplemental Structural Inspection Document, the AD prevails.

(a) For airplanes listed in Section 3.0 of Boeing Document No. D6–48040–1, ''Supplemental Structural Inspection Document'' (SSID), Revision E, dated June 21, 1983: Within 12 months after November 1, 1984 (the effective date of AD 84–21–05, amendment 39–4920), incorporate a revision into the FAA-approved maintenance inspection program which provides no less than the required damage tolerance rating (DTR) for each Structural Significant Item (SSI) listed in that document. (The required DTR value for each SSI is listed in the document.) The revision to the maintenance program shall include and shall be implemented in accordance with the procedures in Sections 5.0 and 6.0 of the SSID. This revision shall be deleted following accomplishment of the requirements of paragraph (b) of this AD.

Note 2: For the purposes of this AD, an SSI is defined as a principal structural element that could fail and consequently reduce the structural integrity of the airplane.

(b) Prior to reaching the threshold specified in paragraph (c) of this AD, or within 12 months after the effective date of this AD, whichever occurs later, incorporate a revision into the FAA-approved maintenance or inspection program that provides no less than the required DTR for each SSI listed in Boeing Document No. D6–48040–1, Volumes 1 and 2, ''Supplemental Structural Inspection Document'' (SSID), Revision H, dated June 1994 (hereinafter referred to as ''Revision H''). (The required DTR value for each SSI is listed in the document.) Except as provided to the contrary in paragraphs (c), (d), and (g) of this AD, the revision to the maintenance or inspection program shall include and shall be implemented in accordance with the procedures in Section 5.0, ''Damage Tolerance Rating (DTR) System Application'' and Section 6.0, ''SSI Discrepancy Reporting'' of Revision H. Upon incorporation of the revision required by this paragraph, the revision required by paragraph (a) of this AD may be deleted.

(c) Except as provided in paragraph (d), (e), or (g) of this AD, perform an inspection to detect cracks in all structure identified in Revision H at the time specified in paragraph (c)(1) or (c)(2) of this AD, as applicable.

(1) For Model 727–100C and 727–200F series airplanes: Inspect prior to the accumulation of 46,000 total flight cycles, or within 3,000 flight cycles measured from the date 12 months after the effective date of this AD, whichever occurs later.

Note 3: The requirements specified by paragraph (c)(1) of this AD only apply to airplanes listed as 727–100C and 727–200F on the type certificate data sheet. Paragraph (c)(1) does not apply to airplanes that have been modified from a passenger configuration to an all-cargo configuration by supplemental type certificate (STC). Paragraphs (c)(2) and (d) apply to those airplanes.

(2) For all airplanes, except for those airplanes identified in paragraph (c)(1) of this AD: Inspect prior to the accumulation of 55,000 total flight cycles, or within 3,000 flight cycles measured from the date 12 months after the effective date of this AD, whichever occurs later.

Note 4: Notwithstanding the provisions of paragraphs 5.1.1, 5.1.2, 5.1.6(e), 5.1.11, 5.1.12, 5.1.13, 5.2, 5.2.1, 5.2.2, 5.2.3, and 5.2.4 of the General Instructions of Revision H, which would permit operators to perform fleet and rotational sampling inspections, to perform inspections on less than whole airplane fleet sizes and to perform inspections on substitute airplanes, this AD requires that all airplanes that exceed the threshold be inspected in accordance with Revision H.

Note 5: Once the initial inspection has been performed, operators are required to perform repetitive inspections at the intervals specified in Revision H in order to remain in compliance with their maintenance or inspection programs, as revised in accordance with paragraph (b) of this AD.

(d) For airplanes on which the structure identified in Revision H has been physically altered in accordance with an STC prior to the effective date of this AD: Accomplish the requirements specified in paragraph (d)(1) or (d)(2) of this AD.

(1) Within 18 months after the effective date of this AD, assess the damage tolerance characteristics of each SSI created or affected by each STC to determine the effectiveness of the applicable Revision H inspection for each SSI and, if not effective, revise the FAA-approved maintenance or inspection program to include an inspection method for each new or affected SSI, and to include the compliance times for initial and repetitive accomplishment of each inspection. Following accomplishment of the revision and within the compliance times established, perform an inspection to detect cracks in the structure affected by any design change or repair, in accordance with the new inspection method. The new inspection method and the compliance times shall be approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note 6: For purposes of this AD, an SSI is ''affected'' if it has been physically altered or repaired, or if the loads acting on the SSI have been increased or redistributed. The effectiveness of the applicable inspection method and compliance time should be determined based on a damage tolerance assessment methodology, such as that described in FAA Advisory Circular AC No. 91–56, Change 2, dated April 15, 1983.

(2) Accomplish paragraphs (d)(2)(i), (d)(2)(ii), and (d)(2)(iii) of this AD.

(i) Within 18 months after the effective date of this AD, submit a plan that describes a methodology for accomplishing the requirements of paragraph (d)(1) of this AD to the Manager, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; fax (425) 227–1181.

Note 7: The plan should include a detailed description of the STC; methodology for identifying new or affected SSI's; method for developing loads and validating the analysis; methodology for evaluating and analyzing the damage tolerance characteristics of each new or affected SSI; and proposed inspection method. The plan would not need to include all of these elements if the operator can otherwise demonstrate that its plan will enable the operator to comply with paragraph (d)(2)(iii) of this AD.

(ii) Within 18 months after the effective date of this AD, perform a detailed visual inspection in accordance with a method approved by the Manager, Seattle ACO to detect cracks in all structure identified in Revision H that has been altered by an STC.

(A) If no crack is detected, repeat the detailed visual inspection thereafter at intervals not to exceed 18 months.

(B) If any crack is detected, prior to further flight, repair it in accordance with a method approved by the Manager, Seattle ACO.

(iii) Within 48 months after the effective date of this AD, revise the FAA-approved maintenance or inspection program to include an inspection method for each new or affected SSI, and to include the compliance times for initial and repetitive accomplishment of each inspection. The inspection methods and the compliance times shall be approved by the Manager, Seattle ACO. Accomplishment of the actions specified in this paragraph constitutes terminating action for the repetitive inspection requirements of paragraph (d)(2)(ii)(A) of this AD.

Note 8: Notwithstanding the provisions of paragraphs 5.1.17 and 5.1.18 of the General Instructions of Revision H, which would permit deletions of modified, altered, or repaired structure from the SSIP, the inspection of SSI's that are modified, altered, or repaired shall be done in accordance with

a method approved by the Manager, Seattle ACO.

(e) For airplanes on which the structure identified in Revision H has been repaired or physically altered by any design change other than an STC identified in paragraph (d), prior to the effective date of this AD: At the time of the first inspection of each SSI after the effective date of this AD in accordance with Revision H, identify each repair or design change to that SSI. Within 12 months after such identification, assess the damage tolerance characteristics of each SSI created or affected by each repair or design change to determine the effectiveness of the applicable SSID inspection for each SSI and, if not effective, revise the FAA-approved maintenance or inspection program to include an inspection method and compliance times for each new or affected SSI. The new inspection method and the compliance times shall be approved by the Manager, Seattle ACO.

Note 9: For the purposes of this AD, a design change is defined as any modification, alteration, or change to operating limitations.

(f) Except as provided in paragraph (d)(2)(ii)(B) of this AD, cracked structure found during any inspection required by this AD shall be repaired, prior to further flight, in accordance with an FAA-approved method.

(g) For airplanes on which the structure identified in Revision H is affected by any design change (including STC's) or repair that is accomplished after the effective date of this AD: Within 12 months after that modification, alteration, or repair, assess the damage tolerance characteristics of each SSI created or affected by each repair or design change to determine the effectiveness of the applicable SSID inspection for each SSI and, if not effective, revise the FAA-approved maintenance or inspection program to include an inspection method and compliance times for each new or affected SSI, and to include the compliance times for initial and repetitive accomplishment of each inspection. The new inspection method and the compliance times shall be approved by the Manager, Seattle ACO.

Note 10: Notwithstanding the provisions of paragraphs 5.1.17 and 5.1.18 of the General Instructions of Revision H, which would permit deletions of modified, altered, or repaired structure from the SIP, the inspection of SSI's that are modified, altered, or repaired shall be done in accordance with a method approved by the Manager, Seattle ACO.

(h) Before any airplane that is subject to this AD and that has exceeded the applicable compliance times specified in paragraph (c) of this AD can be added to an air carrier's operations specifications, a program for the accomplishment of the inspections required by this AD must be established in accordance with paragraph (h)(1) or (h)(2) of this AD, as applicable.

(1) For airplanes that have been inspected in accordance with this AD, the inspection of each SSI must be accomplished by the new operator in accordance with the previous operator's schedule and inspection method, or the new operator's schedule and inspection method, whichever would result in the earlier accomplishment date for that SSI inspection. The compliance time for accomplishment of this inspection must be measured from the last inspection accomplished by the previous operator. After each inspection has been performed once, each subsequent inspection must be performed in accordance with the new operator's schedule and inspection method.

(2) For airplanes that have not been inspected in accordance with this AD, the inspection of each SSI required by this AD must be accomplished either prior to adding the airplane to the air carrier's operations specification, or in accordance with a schedule and an inspection method approved by the Manager, Seattle ACO. After each inspection has been performed once, each subsequent inspection must be performed in accordance with the new operator's schedule.

(i)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 11: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 84–21–05, amendment 39–4920, are not considered to be approved as alternative methods of compliance with this AD.

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

(k) The actions specified in paragraphs (b) and (c) shall be done in accordance with Boeing Document No. D6–48040–1, Volumes 1 and 2, ''Supplemental Structural Inspection Document'' (SSID), Revision H, dated June 1994, which contains the following list of effective pages:

Page number shown on page	Revision level shown on page
List of Active Pages ..... Pages 1 thru 17.2	H

(**Note:** The issue date of Revision H is indicated only on the title page; no other page of the document is dated.). This incorporation by reference was approved previously by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of June 23, 1998 (63 FR 27455, May 19, 1998). Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(l) The effective date of this amendment remains June 23, 1998.

Issued in Renton, Washington, on December 30, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–183 Filed 1–6–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Oxytetracycline and Neomycin; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations concerning antibiotic, nitrofuran, and sulfonamide drugs in the feed of animals. The entry for type A medicated article oxytetracycline and neomycin is amended to reflect that the sponsor of the product is Pfizer, Inc., not Hoffman-La Roche, Inc. Also, the entry for use of type A medicated article oxytetracycline and neomycin base for type C turkey feeds, when used as an aid in reducing mortality in birds which have suffered an attack of air-sacculitis, is amended to change the neomycin use level from 35 to 100 grams (g) of neomycin base per ton of feed to 35 to 105 g/ton.

EFFECTIVE DATE: January 7, 1999.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0212.

SUPPLEMENTARY INFORMATION: FDA is amending the animal drug regulations in 21 CFR 558.15(g)(1) concerning antibiotic, nitrofuran, and sulfonamide drugs in the feed of animals. Previously, for use of type A medicated article oxytetracycline and neomycin, FDA had amended the regulations to remove several entries for Pfizer, Inc. (see 61 FR 51588 at 51590, October 3, 1996). The amendment failed to change the ''do'' for the remaining entry to ''Pfizer, Inc.'' This document provides for that change.

Also, in paragraph (g)(2), in the entry for drug sponsors ''Pfizer, Pennfield, and VPO,'' for type A medicated article ''Oxytetracycline and neomycin base,'' in species ''Turkeys (first 4 weeks),'' the use level for use as an aid in reducing

mortality in birds which have suffered an attack of air-sacculitis is changed. The level subject to interim approval has been recalculated and is changed from ''100 to 150 g/ton and 35 to 100 g/ton'' to ''100 to 150 g/ton and 35 to 105 g/ton''.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.15 [Amended]

2. Section 558.15 *Antibiotic, nitrofuran, and sulfonamide drugs in the feed of animals* is amended in the table, in paragraph (g)(1), in the column ''Drug sponsor'' by removing the ''do'' following the entry ''Hoffman La-Roche, Inc.'' and adding in its place ''Pfizer, Inc.''; and in the table in paragraph (g)(2) in the entry for ''Pfizer, Inc., Pennfield Oil Co., and VPO, Inc.'' for Type A medicated article ''Oxytetracycline and neomycin base,'' for the species ''Turkeys (first 4 weeks),'' by removing the use level ''100 to 150 g/ton and 35 to 100 g/ton'' and adding in its place ''100 to 150 g/ton and 35 to 105 g/ton.''

Dated: December 18, 1998.

Andrew J. Beaulieu,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 99–328 Filed 1–6–99; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[FL–75–1–9806a; FRL–6196–8]

Designation of Areas for Air Quality Planning Purposes Florida: Redesignation of the Duval County Sulfur Dioxide Unclassifiable Area to Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On January 28, 1997, the Florida Department of Environmental Protection (DEP) submitted a request for redesignation to attainment for sulfur dioxide (SO_2) in Duval County, Florida. The redesignation request included five years of quality assured monitoring data which showed no exceedances of the National Ambient Air Quality Standards (NAAQS) for SO_2. Duval County was originally designated as an unclassifiable area in 1978 due to a lack of adequate monitoring data. Sufficient data have now been collected to make an affirmative declaration of attainment status. The EPA is redesignating Duval County from unclassifiable to attainment for SO_2.

DATES: This direct final rule is effective on March 8, 1999 without further notice, unless EPA receives adverse comment by February 8, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to Scott M. Martin, Regulatory Planning Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4 Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

FOR FURTHER INFORMATION CONTACT: Scott M. Martin, Regulatory Planning Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4 Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303. The telephone number is 404–562–9036.

SUPPLEMENTARY INFORMATION: In a **Federal Register** document published March 3, 1978, (43 FR 8962) the Duval County area was designated as unclassifiable for SO_2 due to lack of adequate monitoring data. On January 28, 1997, the State of Florida, through the DEP, submitted a request for redesignation of the Duval County SO_2 unclassifiable area to attainment. Included with this request was five years of quality assured monitoring data which showed that Duval County had not violated the NAAQS for SO_2. The State of Florida has met all the Clean Air Act Amendments of 1990 (CAA) requirements for redesignation pursuant to section 107(d)(3)(E).

Section 107(d)(3)(E)(i) The Administrator has determined that the area has attained the NAAQS.

Florida submitted air quality data demonstrating attainment with both the primary and secondary SO_2 NAAQS for the years 1990 through 1995. As required by the EPA for SO_2 redesignations, a nonattainment area must demonstrate attainment by showing no more than one exceedance annually for two complete, consecutive calendar years and must continue in attainment status until the final notice approving such redesignation is effective. During that period there were no exceedances in the Duval County area, and hence, no violations of the SO_2 NAAQS. The area has continued to monitor attainment of the SO_2 NAAQS to date.

Section 107(d)(3)(E)(ii) The Administrator has fully approved the applicable implementation plan for the area under Section 110(k).

The Florida SO_2 State Implementation Plan (SIP) is fully approved and meets all requirements under section 110(k) which are applicable to the Duval County area.

Section 107(d)(3)(E)(iii) The Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions.

Duval County was originally designated as an unclassifiable area in 1978 due to lack of adequate monitoring data. Monitoring data was submitted for the years 1990 through 1995 which shows Duval County is attaining the NAAQS for SO_2. Additionally, a modeling demonstration was submitted which was completed in accordance with the EPA air quality modeling guidelines. The modeling indicated a need for state operating permits on three facilities. The State submitted permits for SCM Glidco Organics Corporation (now Millennium Specialty Chemicals), Anheuser Bush, Inc., and the Celotex Corporation for approval into the SIP which show reductions in SO_2

emissions. These permits will be replaced by title V permits for the facilities however, the SO_2 emission limitations will remain the same.

Section 107(d)(3)(E)(iv) The Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A.

Duval County was originally designated as an unclassifiable area for SO_2 and maintenance plans are not required for unclassifiable areas requesting redesignation to attainment.

Section 107(d)(3)(E)(v) The State containing such area has met all requirements applicable to the area under Section 110 and Part D.

Florida has complied with all requirements of section 110 and part D of the CAA. Additionally, the State of Florida submitted permits for three plants in the area that provide emission reductions for inclusion in the SIP. These requirements will protect the SO_2 NAAQS in the Duval County area. Therefore, Florida has complied with all requirements of section 110 and part D of the CAA and has satisfied all requirements of section 107(d)(3)(E).

Permit Approval

EPA is approving the following permit conditions into the SIP:

Permit A016–169138 SCM Glidco Organics conditions 1 through 18. Permit A016–222421 Anheuser-Busch, Inc., conditions 1 through 18. Permit AO16–185805 The Celotex Corporation conditions 11 through 16.

Final Action

In this action, EPA is approving the request to redesignate Duval County, Florida, to attainment for the SO_2 NAAQS. Additionally, EPA is approving the permit conditions for the SCM Glidco Organics Corporation, Anheuser Bush, Inc., and the Celotex Corporation.

The SO_2 SIP is designed to satisfy the requirements of part D of the CAA and to provide for attainment and maintenance of the SO_2 NAAQS. This final redesignation should not be interpreted as authorizing the State to delete, alter, or rescind any of the SO_2 emission limitations and restrictions contained in the approved SO_2 SIP. Changes to SO_2 SIP regulations rendering them less stringent than those contained in the EPA approved plan cannot be made unless a revised plan for attainment and maintenance is submitted to and approved by EPA. Unauthorized relaxations, deletions, and changes could result in both a finding of non-implementation [section 173(b) of the CAA] and in a SIP deficiency call made pursuant to section 110(a)(2)(H) of the CAA.

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 March 8, 1999 without further notice unless the Agency receives relevant adverse comments by February 8, 1999.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Only parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on March 8, 1999 and no further action will be taken on the proposed rule.

Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 12875

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

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

C. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

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

D. Executive Order 13045

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

and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

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 March 8, 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

40 CFR Part 52

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

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: November 10, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Chapter I, title 40, *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 K—Florida

2. Section 52.520, is amended by adding paragraph (c)(101) to read as follows:

§ 52.520 Identification of plan.

* * * * *

(c) * * *

(101) Revisions to the Florida SIP adding SO_2 permits to specify SO_2 emission limits for three sources in Duvall County, Florida submitted on January 28, 1997.

(i) Incorporation by reference. The following source specific SO_2 permits of the Florida Department of Environmental Protection.

SO_2 Permits:

(A) Permit AO16–169138 SCM Glidco Organics conditions 1 through 18.

(B) Permit AO16–222421 Anheuser-Busch, Inc., conditions 1 through 18.

(C) Permit AO16–185805 The Celotex Corporation conditions 11 through 16.

(ii) Other material. None.

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42.U.S.C. 7401–7671q.

Subpart C—Section 107 Attainment Status Designations

2. In § 81.310, the ''Florida-SO_2'' table is amended by revising the entry for ''Duvall County'' to read as follows:

§ 81.310 Florida.

* * * * *

FLORIDA—SO_2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Duvall County				X
*	*	*	*	*

* * * * *

[FR Doc. 99–229 Filed 1–6–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

Radio Broadcasting Services; Various Locations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, on its own motion, editorially amends the Table of FM Allotments to specify the actual classes of channels allotted to various communities. The changes in channel classifications have been authorized in response to applications filed by licensees and permittees operating on these channels. This action is taken pursuant to *Revision of Section 73.3573(a)(1) of the Commission's Rules Concerning the Lower Classification of an FM Allotment,* 4 FCC Rcd 2413 (1989), and the *Amendment of the Commission's Rules to permit FM Channel and Class Modifications [Upgrades] by Applications,* 8 FCC Rcd 4735 (1993).

EFFECTIVE DATE: January 7, 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, adopted December 2, 1998, and released December 11, 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 Service, 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:

47 CFR 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 Arizona, is amended by removing Channel 228C3 and adding Channel 228C2 at Show Low.

3. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by removing Channel 274C3 and adding Channel 274C2 at Van Buren, and by removing Channel 276C3 and adding Channel 276C2 at Waldron.

4. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Channel 272C3 and adding Channel 272C1 at Jensen Beach.

5. Section 73.202(b), the Table of FM Allotments under Georgia is amended by removing Channel 287A and adding Channel 287C3 at Quitman.

6. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by removing Channel 274A and adding Channel 274C3 at Northwood.

7. Section 73.202(b), the Table of FM Allotments under Kansas, is amended by removing Channel 290A and adding Channel 290C1 at Ingalls.

8. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by removing Channel 235C3 and adding Channel 235C2 at Coushatta.

9. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by removing Channel 275A and adding Channel 275C3 at Bonanza and by removing Channel 268C2 and adding Channel 268C1 at Corvallis.

10. Section 73.202(b), the Table of FM Allotments under Washington, is amended by removing Channel 242C3 and adding Channel 242C2 at Royal City.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–276 Filed 1–6–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

48 CFR Part 5315

Types of Contracts

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Final rules.

SUMMARY: The Department of the Air Force is amending Title 48, Chapter 53 of the CFR by removing Part 5315, Types of Contracts. This rule is removed because it does not meet the requirement for codification. It was revised as part of the Federal Acquisition Regulation Part 15 rewrite, and was changed in the AFFARS on an interim basis by Contracting Policy memo 98–C–02 on January 8, 1998. It contains internal operating procedures that will be finalized in AFAC 96–2.

EFFECTIVE DATE: December 28, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. David Powell, Contracting Policy Branch, SAF/AQCP, 1060 Air Force Pentagon, Washington, DC 20330–1060, telephone (703) 588–7062.

SUPPLEMENTARY INFORMATION:

Authority: Under the authority of 5 U.S.C. 301 and FAR 1.301 48 CFR, Chapter 53, is amended by removing Part 5315.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–286 Filed 1–6–99; 8:45 am]

BILLING CODE 5001–05–U

Proposed Rules

Federal Register
Vol. 64, No. 4
Thursday, January 7, 1999

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 HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 216

[Docket No. 98N–0182]

List of Bulk Drug Substances That May Be Used in Pharmacy Compounding

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing a new regulation which will identify the bulk drug substances that may be used in pharmacy compounding under the exemptions provided by the Federal Food, Drug, and Cosmetic Act (the act) even though such substances are neither the subject of a current United States Pharmacopeia (USP) or National Formulary (NF) monograph nor a component of an FDA-approved drug. FDA's development and publication of this bulk drugs list is statutorily required by the Food and Drug Administration Modernization Act of 1997 (the Modernization Act).

DATES: Submit written comments on or before March 23, 1999.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Robert J. Tonelli, Center for Drug Evaluation and Research (HFD–332), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7295.

SUPPLEMENTARY INFORMATION:

I. Background

President Clinton signed the Modernization Act (Pub. L. 105–115) into law on November 21, 1997. Section 127 of the Modernization Act, which added section 503A to the act (21 U.S.C. 353a), clarifies the status of pharmacy compounding under Federal law. Under section 503A of the act, drug products that are compounded by a pharmacist or physician on a customized basis for an individual patient may be entitled to exemptions from three key provisions of the act: (1) The adulteration provision of section 501(a)(2)(B) (21 U.S.C. 351 (a)(2)(B)) (concerning the good manufacturing practice requirements); (2) the misbranding provision of section 502(f)(1) (21 U.S.C. 352(f)(1)) (concerning the labeling of drugs with adequate directions for use); and (3) the new drug provision of section 505 (21 U.S.C. 355) (concerning the approval of drugs under new drug or abbreviated new drug applications).

To qualify for these statutory exemptions, a compounded drug product must satisfy several requirements. One of these requirements, found in section 503A(b)(1)(A) of the act, restricts the universe of bulk drug substances that a compounder may use. Section 503A(b)(1)(A) provides, in relevant part, that every bulk drug substance used in compounding: (1) Must comply with an applicable and current USP or NF monograph, if one exists, as well as the current USP chapter on pharmacy compounding; (2) if such a monograph does not exist, the bulk drug substance must be a component of an FDA-approved drug;[1] or (3) if a monograph does not exist and the bulk drug substance is not a component of an FDA-approved drug, it must appear on a list of bulk drug substances that may be used in compounding (i.e., the bulk drugs list being proposed in this rulemaking). The term ''bulk drug substance'' is defined in FDA regulations at 21 CFR 207.3(a)(4) to mean ''any substance that is represented for use in a drug and that, when used in the manufacturing, processing, or packaging of a drug, becomes an active ingredient or finished dosage form of the drug, but the term does not include intermediates used in the synthesis of such substances'' (see section 503A(b)(1)(A) of the act).

[1] To identify such FDA-approved drugs, compounders can consult the publication entitled ''Approved Drug Products with Therapeutic Equivalence Evaluation,'' commonly referred to as the ''Orange Book.''

II. Criteria for Bulk Drug Substances

According to section 503A(d)(2) of the act, the criteria for determining which substances should appear on the bulk drugs list ''shall include historical use, reports in peer reviewed medical literature, or other criteria the Secretary of Health and Human Services may identify.'' The FDA, after consulting with the USP and the Pharmacy Compounding Advisory Committee, is proposing to use the following four criteria: (1) The chemical characterization of the substance; (2) the safety of the substance; (3) the historical use of the substance in pharmacy compounding; and (4) the available evidence of the substance's effectiveness or lack of effectiveness, if any such evidence exists.

In evaluating candidates for the bulk drugs list under these criteria, the agency proposes to use a balancing test. No single one of these criteria will be considered to be dispositive. Rather, the agency will consider each criterion in the context of the others and balance them, on a substance-by-substance basis, in deciding whether a particular substance is appropriate for inclusion on the list.

Under the first criterion, the chemical characterization of the substance, FDA will consider each substance's purity, identity, and quality. Based on attributes such as the substance's chemical formula, melting point, appearance, and solubilities, FDA will determine whether the substance can be identified consistently based on its chemical characteristics. If a substance cannot be well characterized chemically, this criterion will weigh against its inclusion on the proposed bulk drugs list because there can be no assurance that its properties and toxicities when used in compounding would be the same as the properties and toxicities reported in the literature and considered by the agency.

Under the second criterion, FDA will consider the safety issues raised by the use of each substance in general pharmacy compounding. Based on FDA's review of the substances nominated to date, it is unlikely that candidates for the bulk drugs list will have been thoroughly investigated in well-controlled animal toxicology studies, or that there will be well-controlled clinical studies to substantiate their safe use in humans.

Thus, in evaluating list candidates, the agency is likely to have at its disposal either none or very little of the type or quality of information that is ordinarily required and evaluated as part of the drug approval process.

To evaluate the safety of the substances, then, the agency will rely on information about each substance's acute toxicity, repeat dose toxicity, and other reported toxicities, including mutagenicity, teratogenicity, and carcinogenicity. The agency will also rely on reports and abstracts in the literature about adverse reactions the substances have caused in humans. In applying the toxicity criterion, FDA may also consider the availability of alternative approved therapies when the toxicity of a particular substance appears to be significant. The existence of alternative approved therapies is likely to weigh against inclusion on the proposed list because the risks of using a substance with significant toxicities is more likely to outweigh the benefits when approved alternative therapies are available.

Under the third criterion, the historical use of the substance in pharmacy compounding, FDA will consider the length of time the substance has been used in pharmacy compounding, the medical conditions it has been used to treat, and how widespread its use has been. This criterion will weigh in favor of list inclusion for nominated substances that have enjoyed longstanding and widespread use in pharmacy compounding for a particular indication. Evidence of both widespread and longstanding use will be viewed by the agency as indicative of the substance's perceived usefulness and acceptance in the medical community. Fraudulent or ''quack'' remedies, on the other hand, will be less likely to be included on the list as a result of this criterion because the practice of compounding such drugs is not expected to be sufficiently prevalent and longstanding.

Under the fourth criterion, FDA will consider the available evidence of the substance's effectiveness or lack of effectiveness for a particular use, if any such evidence exists. When drugs go through the new drug approval process, they are required to demonstrate effectiveness under the substantial evidence standard described in section 505(d) of the act. FDA recognizes that few, if any, of the candidates for the bulk drugs list will have been studied in adequate and well-controlled investigations sufficient to satisfy this standard. Thus, in its balancing of the relevant criteria, the agency will take into account whatever relevant evidence concerning effectiveness is available.

For example, for substances that have been widely used for a long period of time, the literature may include anecdotal reports of effectiveness for a particular use, or reports of one or more trials demonstrating effectiveness. Conversely, the literature may contain anecdotal or clinical evidence that a particular bulk drug substance was shown not to be effective for a particular use (negative effectiveness data).

When evaluating a bulk drug substance used to treat a less serious illness, FDA will generally be more concerned about the safety of the substance than about its effectiveness. Thus, the absence of effectiveness data, or the existence of mere anecdotal reports, will be less likely to preclude inclusion of the substance on the list. However, for a bulk drug substance used to treat a more serious or life-threatening disease, there may be more serious consequences associated with ineffective therapy, particularly when there are alternative approved therapies. In those cases, the absence of effectiveness data, or the presence of negative effectiveness data, will weigh more heavily in FDA's balancing of the relevant criteria.

III. FDA Development of a Bulk Drugs List

A. Methodology

Although the Modernization Act directs FDA to develop a list of bulk drug substances for use in pharmacy compounding, it does not specify how candidates for the list should be identified. In a notice published in the **Federal Register** of April 7, 1998 (63 FR 17011), FDA invited all interested persons to nominate bulk drug substances for inclusion on the list. In response to this request, FDA received nominations for 41 different drug substances. The nominations came from Abbott Laboratories, the American Academy of Dermatology, the Texas Pharmacy Association, the North Carolina Board of Pharmacy, Moss Pharmacy and Nutrition Center, the University of Texas MD Anderson Cancer Center, the International Academy of Compounding Pharmacists, Baxter Healthcare Corp., Scottsdale Skin & Cancer Center Ltd., Dermatology Associates, and Neil Brody, M.D.

Ten of the nominated substances (clotrimazole, fluocinonide, hydrocortisone, hydroquinone, mechlorethamine, pramoxine, quinacrine hydrochloride, salicylic acid, tretinoin, and triamcinolone) are the subject of a USP or NF monograph or are components of FDA-approved drugs. As such, they already qualify for use in pharmacy compounding under section 503A(b)(1)(A)(i) of the act (assuming they satisfy all other applicable requirements of the act). Therefore, FDA dismissed these substances as list candidates and will not address them further in this proposed rulemaking. An additional substance (sulfadimethoxine) was eliminated as a list candidate after being withdrawn by its sponsor at the inaugural meeting of the Pharmacy Compounding Advisory Committee. It too will not be addressed further in this proposed rulemaking.

The remaining 30 nominations were appropriate list candidates and were evaluated based on a balancing of the four criteria identified in section II of this document: (1) The chemical characterization of the substance; (2) the safety of the substance; (3) the historical use of the substance in pharmacy compounding; and (4) the available evidence of the substance's effectiveness or lack of effectiveness, if any such evidence exists.[2]

The information that FDA assessed under each of the evaluation criteria was obtained from journal reports and abstracts from reliable medical sources, including peer reviewed medical literature. This information is available for viewing at the Dockets Management Branch (address above) under Docket No. 98N–0182. Some of this information was submitted in support of the nominations. The remainder FDA gathered through independent searches of medical and pharmaceutical data bases. FDA did not review any raw data.

The nature, quantity, and quality of the information assessed by FDA varied considerably from substance to substance. In some cases there was very little data. For example, the agency found only two relevant journal articles concerning thymol iodide. For other substances, such as taurine and sodium butyrate, reports in the literature were more plentiful and sometimes comprised hundreds of articles. In those cases, the agency reviewed a limited sample of the available literature sources.

Because FDA's assessment of the nominated substances was far less rigorous and far less extensive than the agency's ordinary evaluation of drugs as part of the new drug approval process,

[2] In making its evaluations, the agency did not consider whether any of the nominated substances are manufactured by an establishment registered under section 510 of the act (see 21 U.S.C. 353a(b)(1)(A)(ii)). This registration requirement is one of a number of other conditions that must be satisfied to qualify for the applicable compounding exemptions.

the inclusion of a drug substance on the proposed bulk drugs list should not, in any way, be equated with an approval, endorsement, or recommendation of the substance by FDA. Nor should it be assumed that substances on the proposed list have been proven to be safe and effective under the standards normally required to receive agency approval. In fact, any person who represents that a compounded drug made with a bulk drug substance that appears on this list is FDA-approved, or otherwise endorsed by FDA generally or for a particular indication, will cause such drug to be misbranded under section 502(a) of the act.

On October 14 and 15, 1998, FDA consulted with the Pharmacy Compounding Advisory Committee, created under section 503A(d)(1) of the act about the contents of this proposed rule (see 63 FR 47301, September 4, 1998). The discussion included the criteria FDA proposes to use to evaluate candidates for the bulk drugs list and the nominations that FDA has already received.[3] In general, the advisory committee agreed with the approach taken by the agency in evaluating the nominated bulk drug substances and the agency's tentative conclusions regarding whether these substances should be included on the bulk drugs list. The agency has taken into consideration all of the advisory committee's recommendations in developing this proposed rule, and the agency intends to continue to consult with the Pharmacy Compounding Advisory Committee in evaluating future candidates for the bulk drugs list.

After evaluating the comments on this proposed rule, FDA is proposing to issue the bulk drugs list as a final rule which will be codified in the Code of Federal Regulations (CFR). The final version of the rule may include all, or only some, of the substances proposed for inclusion on the list in this proposal, depending on the comments received. Individuals and organizations will be able to petition FDA to amend the list (to add or delete bulk drug substances) at any time after the final rule is published. Amendments to the list will be proposed through rulemaking.

With regard to nominated substances discussed in this proposed rulemaking (substances proposed for inclusion on the proposed list and substances that have been nominated but are still under consideration by the agency), FDA intends to exercise its enforcement discretion regarding regulatory action during the pendency of this proposed rulemaking. For further information on this subject, see the guidance for industry entitled ''Enforcement Policy During Implementation of Section 503A of the Federal Food, Drug, and Cosmetic Act'' (see 63 FR 64723, November 23, 1998).

[3] A transcript of the advisory committee meeting may be found at the Dockets Management Branch (address above) under Docket No. 98N–0182.

B. Nominated Drug Substances Being Proposed for Inclusion on the Bulk Drugs List

Under section 503A(d)(2) of the act, FDA is proposing that the following 20 drug substances, which are neither the subject of a current USP or NF monograph nor components of FDA-approved drugs, be included in the list of bulk drug substances that may be used in compounding under the exemptions provided in section 503A of the act (sections 501(a)(2)(B), 502(f)(1), and 505). When a salt or ester of an active moiety is listed, e.g., diloxanide furoate, only that particular salt or ester may be used. Neither the base compound nor other salts or esters of the same active moiety qualify for section 503A of the act's compounding exemptions, unless separately listed.

The following bulk drugs list is being proposed in § 216.23 of title 21 of the CFR. (Section 216.23 will be included in new part 216, which is currently intended to include all FDA regulations whose primary purpose is implementation of the pharmacy compounding provisions found in section 503A of the act):

Bismuth citrate. Bismuth citrate is well characterized chemically. It has been used extensively in compounded products for short-term treatment of several gastrointestinal disorders, including Helicobacter pylori-associated ulcers. At doses reported in the literature for these indications, bismuth citrate appears to be relatively nontoxic, and serious adverse reactions associated with its use have not been commonly reported. Limited anecdotal evidence of bismuth citrate's effectiveness for these indications is also reported in the literature.

Caffeine citrate. Caffeine citrate is well characterized chemically. As a central nervous system stimulant, caffeine citrate has been used extensively and for many years in compounded products to treat apnea in premature infants. At doses reported in the literature for this indication, caffeine citrate appears to be relatively nontoxic, and serious adverse reactions associated with its use have not been commonly reported. Limited anecdotal evidence of caffeine citrate's effectiveness for this indication is also reported in the literature.

Cantharidin. Cantharidin, which is well characterized chemically, is a substance obtained from the Chinese blister beetle, among other beetle species, that has been used topically in the treatment of warts and molluscum contagiosum, often in patients with compromised immune systems. Limited anecdotal evidence of cantharidin's effectiveness for these indications is reported in the literature. Although cantharidin is an extremely toxic substance, it is apparently used only in the professional office setting and not dispensed for home use. Because of cantharidin's toxicity, FDA is proposing to include it on the bulk drugs list for topical use in the professional office setting only.

Choline bitartrate. Choline bitartrate is well characterized chemically. It has been used to treat Alzheimer's-type dementia. It has also been used to treat infantile colic. At doses reported in the literature for these indications, choline bitartrate appears to be relatively nontoxic, and serious adverse reactions associated with its use have not been commonly reported. Limited anecdotal evidence of choline bitartrate's effectiveness for these indications is also reported in the literature. Additionally, FDA has previously established that choline bitartrate is generally recognized as safe, as a dietary supplement, when used in accordance with good manufacturing practices (see 21 CFR 182.8250 (45 FR 58837, September 5, 1980)).

Diloxanide furoate. Diloxanide furoate is well characterized chemically. It has been used to treat parasitic diseases such as intestinal amoebiasis. At doses reported in the literature for these indications, diloxanide furoate appears to be relatively nontoxic, and serious adverse reactions associated with its use have not been commonly reported. Limited anecdotal evidence of diloxanide furoate's effectiveness for these indications is also reported in the literature.

Dimercapto-1-propanesulfonic acid. Dimercapto-1-propanesulfonic acid (DMPS), a chelating agent, is well characterized chemically. DMPS has been used to treat heavy metal poisoning. At doses reported in the literature for this indication, DMPS appears to be relatively nontoxic, and serious adverse reactions associated with its use have not been commonly reported. Limited anecdotal evidence of DMPS's effectiveness for this indication is also reported in the literature.

Ferric subsulfate.[4] Ferric subsulfate is well characterized chemically. It has been used as a topical hemostatic agent to control bleeding associated with minor surgical procedures, biopsies, and minor gynecological surgery involving the cervix. At doses reported in the literature for this indication, ferric subsulfate appears to be relatively nontoxic, and serious adverse reactions associated with its use have not been commonly reported. Limited anecdotal evidence of ferric subsulfate's effectiveness for this indication is also reported in the literature. However, because the literature is limited to topical use of this substance, FDA is proposing to include it on the bulk drugs list for topical use only.

Ferric sulfate hydrate. Ferric sulfate hydrate is well characterized chemically. It has been used topically as a hemostatic agent to control bleeding from dermatological and dental procedures. At doses reported in the literature for these indications, ferric sulfate hydrate appears to be relatively nontoxic, and serious adverse reactions associated with its use have not been commonly reported. Limited anecdotal evidence of ferric sulfate hydrate's effectiveness for this indication is also reported in the literature. However, because the literature is limited to topical use of this substance, FDA is proposing to include it on the bulk drugs list for topical use only.

Glutamine. Glutamine, the most abundant free amino acid found in the human body, is well characterized chemically. Glutamine is involved in a wide variety of metabolic processes, including regulation of the body's acid-base balance. For years, glutamine has been used in compounding as a supplement in parenteral nutrition regimens in adults. At doses reported in the literature for this use, glutamine appears to be relatively nontoxic, and serious adverse reactions associated with its use have not been commonly reported. Limited anecdotal evidence of glutamine's effectiveness for this indication is also reported in the literature.

Guaiacol. Guaiacol is well characterized chemically. It has been used for decades in compounded products as an expectorant. At doses reported in the literature for this indication, guaiacol appears to be relatively nontoxic, and serious adverse reactions associated with its use have not been commonly reported. Limited anecdotal evidence of guaiacol's effectiveness for this indication is also reported in the literature.

Iodoform. Iodoform is well characterized chemically. It has been used for the control of acute epistaxis (nosebleeds) and as a paste for dental root fillings. Iodoform has tested positive in in vitro mutagenicity assays and in an in vitro transformational assay in mammalian cells. However, in 2-year bioassays conducted by the National Toxicology Program, iodoform was found to be noncarcinogenic in rats and mice. At doses reported in the literature for these indications, iodoform appears to be relatively nontoxic, and serious adverse reactions associated with its use have not been commonly reported. Limited anecdotal evidence of iodoform's effectiveness for these indications is also reported in the literature. However, because the literature is limited to the topical and intradental use of this substance, FDA is proposing to include it on the bulk drugs list for topical and intradental use only.

Metronidazole benzoate. Metronidazole benzoate, which is well characterized chemically, has been used to treat parasitic diseases such as amoebiasis and giardiasis. The base of this substance (metronidazole) is an FDA-approved drug which has a bitter taste. The benzoate salt apparently renders metronidazole tasteless, however, so metronidazole benzoate is sometimes prescribed instead of the metronidazole base to increase patient compliance, especially in children. Serious adverse reactions associated with the use of metronidazole benzoate have not been commonly reported, and limited anecdotal evidence of its effectiveness is reported in the literature. Although the agency is proposing to include metronidazole benzoate on the bulk drugs list, it is specifically seeking public comment on metronidazole benzoate's solubility and appropriate dosing, as questions about these issues have been raised in the literature.

Myrrh gum tincture. Myrrh is a gum resin obtained from the stem of *Commiphora molmol* and other species of camphora. Myrrh is a mixture of many substances and has not been well characterized chemically. Myrrh has been used in its natural form and as a tincture to treat inflammatory disorders of the mouth and pharynx. The preparation reviewed by FDA is the tincture, which, at doses reported in the literature for those indications, appears to be relatively nontoxic. Serious adverse reactions associated with the use of myrrh gum tincture have not been commonly reported. Limited anecdotal evidence of myrrh gum tincture's effectiveness for those indications is also reported in the literature. Because the literature is limited to the topical use of this substance, FDA is proposing to include it on the bulk drugs list for topical use only.

Phenindamine tartrate. Phenindamine tartrate is well characterized chemically. It is an antihistamine that has been used to treat hypersensitivity reactions including urticaria (hives) and rhinitis (nasal inflammation). At doses reported in the literature for this indication, phenindamine tartrate appears to be relatively nontoxic, and serious adverse reactions associated with its use have not been commonly reported. Additionally, in developing the over-the-counter monograph for antihistamine drug products, FDA previously established that phenindamine tartrate, under the conditions established in the monograph (including particular labeling and dosage limits), is generally recognized as safe and effective for over-the-counter antihistamine use (see 21 CFR 341.12; 57 FR 58356, December 9, 1992). Limited anecdotal evidence of phenindamine tartrate's effectiveness as an antihistamine is reported in the literature.

Phenyltoloxamine dihydrogen citrate. Phenyltoloxamine dihydrogen citrate, a structural isomer of diphenhydramine, is well characterized chemically. It has been used as an antihistamine. At doses reported in the literature for this indication, phenyltoloxamine dihydrogen citrate appears to be relatively nontoxic, and serious adverse reactions associated with its use have not been commonly reported. Limited anecdotal evidence of phenyltoloxamine dihydrogen citrate's effectiveness as an antihistamine is reported in the literature.

Piracetam. Piracetam, a derivative of the amino acid gamma-amino butyric acid, is well characterized chemically. Piracetam is believed by some to enhance certain cognitive skills, and has been used to treat Down's syndrome, dyslexia, and Alzheimer's disease, among other cognitive disorders. At doses reported in the literature for these indications, piracetam appears to be relatively nontoxic, and serious adverse reactions associated with its use have not been commonly reported. Limited anecdotal evidence of piracetam's effectiveness for these indications is reported in the literature.

Sodium butyrate. Sodium butyrate is a short chain fatty acid that is well characterized chemically. It has been

[4] Both ferric subsulfate solution and ferric subsulfate powder were nominated for inclusion on the bulk drugs list. FDA combined them under one entry for ferric subsulfate.

used rectally in an enema formulation to treat several inflammatory bowel conditions, including ulcerative colitis and diversion colitis. At doses reported in the literature for these indications, sodium butyrate appears to be relatively nontoxic, and serious adverse reactions associated with its use have not been commonly reported. Limited anecdotal evidence of sodium butyrate's effectiveness for these indications is also reported in the literature. However, because the literature is limited to the use of sodium butyrate rectally in an enema formulation, FDA is proposing to include it on the bulk drugs list for use in this dosage form and route of administration only.

Taurine. Taurine, an amino acid with several important physiological functions, including a role in bile acid conjugation, is well characterized chemically. It has been used for years in compounding as a component in parenteral nutrition solutions for infants and adult patients. At doses reported in the literature for this use, taurine appears to be relatively nontoxic, and serious adverse reactions associated with its use have not been commonly reported. Limited anecdotal evidence of taurine's effectiveness for this indication is also reported in the literature.

Thymol iodide. Thymol iodide is well characterize chemically. It has been used as a topical agent for its absorbent, protective, and antimicrobial properties. At doses reported in the literature for these indications, thymol iodide appears to be relatively nontoxic, and serious adverse reactions associated with its use have not been commonly reported. Limited anecdotal evidence of thymol iodide's effectiveness for these indications is also reported in the literature. FDA notes, however, that it was able to identify only two relevant articles concerning this substance. Because the literature is limited to the topical use of thymol iodide, FDA is proposing to include it on the bulk drugs list for topical use only.

Tinidazole. Tinidazole is a chemically well-characterized derivative of 5-nitromidazole. It has been used, often in conjunction with diloxanide furoate, which also appears on this proposed list, to treat parasitic diseases such as amoebiasis and giardiasis. At doses reported in the literature for these indications, tinidazole appears to be relatively nontoxic, and serious adverse reactions associated with its use have not been commonly reported. Limited anecdotal evidence of tinidazole's effectiveness for these indications is also reported in the literature.

C. Nominated Drug Substances Still Under Consideration for the Bulk Drugs List

The following 10 drug substances were nominated for inclusion on the proposed bulk drugs list. However, for the reasons described in section III.C of this document, they are still under review by the agency:

4-Aminopyridine. The drug substance 4-Aminopyridine (4-AP), which is well characterized chemically, is a potassium channel blocker that may enhance the release of acetylcholine from nerve terminals. It has been used to treat several neurological disorders, including Lambert-Eaton myasthenic syndrome, multiple sclerosis, and Alzheimer's disease. It also has been used to reverse the effects of nondepolarizing muscle relaxants. At doses reported in the literature, the side effects of 4-AP for most patients do not appear to be serious. However, there have been some reports of seizures associated with the use of 4-AP. FDA would like more information about the historical use, safety, and effectiveness of 4-AP before deciding whether to propose it for inclusion on the bulk drugs list. The Pharmacy Compounding Advisory Committee similarly expressed a desire for more information about 4-AP before making a recommendation about its status to the agency. FDA is soliciting public input on these and any other issues that are relevant to the agency's consideration of this substance for the bulk drugs list.

Betahistine dihydrochloride. Betahistine dihydrochloride is a chemically well characterized histamine analog. Formerly marketed as Serc tablets, betahistine dihydrochloride was approved by FDA to treat the symptoms of vertigo in patients with Meniere's disease. In 1970, however, FDA withdrew approval of the new drug application for Serc tablets because they were found to lack substantial evidence of effectiveness for this approved indication (see 35 FR 17563, November 14, 1970). FDA will consult with the Pharmacy Compounding Advisory Committee at a future meeting about whether to include betahistine dihydrochloride on the bulk drugs list and will address the effect of its withdrawal from the market at that time.

Cyclandelate. Cyclandelate, which is well characterized chemically, is a vasodilator that was formerly approved by FDA for two indications: (1) Treatment for intermittent claudication caused by arteriosclerosis obliterans, and (2) as a treatment for cognitive dysfunction in patients suffering from senile dementia of the multi-infarct or Alzheimer's type. Cyclandelate was formerly marketed in Cyclospasmol capsules and tablets, which were removed from the market for lack of effectiveness for these approved indications (see 61 FR 64099, December 3, 1996). FDA will consult with the Pharmacy Compounding Advisory Committee at a future meeting about whether to include cyclandelate on the bulk drugs list and will address the effect of its withdrawal from the market at that time.

3,4-Diaminopyridine. The drug substance 3,4-Diaminopyridine (DAP), which is well characterized chemically, is a potassium channel blocker that may enhance the release of acetylcholine from nerve terminals. DAP has been used in the treatment of several neuromuscular disorders, including Lambert-Eaton myasthenic syndrome, myasthenia gravis, amyotrophic lateral sclerosis, and multiple sclerosis. At doses reported in the literature, DAP appears to be well tolerated and its toxicity appears to be dose related. There have been reports of seizures with its use, however, and DAP is contraindicated in patients with epilepsy. FDA would like more information about the historical use, safety, and effectiveness of DAP before deciding whether to propose it for inclusion on the bulk drugs list. The Pharmacy Compounding Advisory Committee similarly expressed a desire for more information about DAP before making a recommendation about its status to the agency. FDA is soliciting public input on these and any other issues that are relevant to the agency's consideration of this substance for the bulk drugs list.

Dinitrochlorobenzene. Dinitrochlorobenzene (DNCB), which is well characterized chemically, has been used in the treatment of recurrent melanoma and as a skin sensitizer to estimate immune system competency. It also has been used topically in the treatment of warts. Limited anecdotal evidence of DNCB's effectiveness for these indications is reported in the literature. DNCB is a highly toxic substance that may be fatal if inhaled, swallowed, or absorbed through skin. High concentrations of DNCB are also extremely destructive to tissues of the mucous membranes and upper respiratory tract, eyes, and skin. At the inaugural meeting of the Pharmacy Compounding Advisory Committee, the nominator of this substance withdrew it as a list candidate, but several members of the committee recommended that it still be considered. The Pharmacy Compounding Advisory Committee then voiced concerns about the safety of the

substance and expressed a desire for more information about it before making a recommendation to the agency. FDA agrees and, therefore, is requesting public input about the historical use, safety, and effectiveness of DNCB, as well as any other information that would be relevant to the agency's consideration of DNCB for the bulk drugs list.

Diphenylcyclopropenone. Diphenylcyclopropenone, which is well characterized chemically, has been used for the topical treatment of extensive alopecia areata. The nomination of this substance was not received by FDA in time to permit a full discussion of it at the October 1998 meeting of the Pharmacy Compounding Advisory Committee. A decision about this substance is therefore being deferred until after FDA has had an opportunity to consult the Pharmacy Compounding Advisory Committee about it at a future meeting.

Hydrazine sulfate. Hydrazine sulfate is well characterized chemically and has been used to treat cachexia in cancer patients. The substance, however, is extremely toxic. Multiple exposures to hydrazine sulfate have caused liver and kidney damage, gastrointestinal damage, convulsions, and coma, among other conditions. Hydrazine sulfate is also considered by the International Agency for Research on Cancer to be a potential carcinogen to humans. In at least two clinical studies, hydrazine sulfate was shown to have no effect, or even a negative effect, on patients who received it. FDA would like more information about the historical use, safety, and effectiveness of hydrazine sulfate before deciding whether to propose it for inclusion on the bulk drugs list. The Pharmacy Compounding Advisory Committee similarly expressed a desire for more information about hydrazine sulfate before making a recommendation about its status to the agency. FDA is soliciting public input on these and any other issues that are relevant to the agency's consideration of this substance for the bulk drugs list.

Pentylenetetrazole. Pentylenetetrazole, which is well characterized chemically, was approved by FDA for use in the treatment of senile confusion, depression, psychosis, fatigue, and debilitation, as well as for the relief of dizzy spells, mild behaviorial disorders, irritability, and functional memory disorders in elderly patients. Pentylenetetrazole was formerly marketed in numerous drug products, all of which were removed from the market for lack of effectiveness for these approved indications (see 47 FR 19208, May 4, 1982). FDA will consult with the Pharmacy Compounding Advisory Committee at a future meeting about whether to include pentylenetetrazole on the bulk drugs list and will address the effect of its withdrawal from the market at that time.

Silver protein mild. Mild silver protein is well characterized chemically. It has been used to treat conjunctivitis and by ophthalmologists as a preoperative chemical preparation of the eye. At doses reported in the literature for these indications, mild silver protein appears to be relatively nontoxic, and serious adverse reactions associated with its use have not been commonly reported. When mild silver protein is administered internally, however, it can cause serious untoward side effects, including argyria, a permanent ashen-gray discoloration of the skin, conjunctiva, and internal organs (see 61 FR 53685, October 15, 1996). At this time, FDA is deferring a decision on this substance because questions were raised at the inaugural meeting of the Pharmacy Compounding Advisory Committee about its efficacy. FDA is soliciting public input on this issue and any other issues that are relevant to the agency's consideration of mild silver protein for the bulk drugs list.

Squaric acid dibutyl ester. Squaric acid dibutyl ester, which is well characterized chemically, is a contact sensitizer that has been used as a topical treatment for alopecia areata and warts. The nomination of this substance was not received by FDA in time to permit a full discussion of it at the October 1998 meeting of the Pharmacy Compounding Advisory Committee. A decision about this substance is therefore being deferred until after FDA has had an opportunity to consult the Pharmacy Compounding Advisory Committee about it at a future meeting.

IV. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of this proposed rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). 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 Regulatory Flexibility Act requires agencies to examine regulatory alternatives for small entities if the proposed rule is expected to have a significant economic impact on a substantial number of small entities. The Unfunded Mandates Reform Act requires agencies to prepare an assessment of anticipated costs and benefits before enacting any rule that may result in an expenditure in any 1 year by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation).

The agency has reviewed this proposed rule and has determined that it is consistent with the regulatory philosophy and principles identified in the Executive Order and these two statutes. The proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order. As discussed below, the agency certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. Also, because the rule is not expected to result in any annual expenditures, FDA is not required to prepare a cost/benefit analysis under the Unfunded Mandates Reform Act.

FDA is proposing to amend its regulations to include a list of bulk drugs that may be used in pharmacy compounding under certain conditions even though such substances are neither the subject of a USP or NF monograph nor components of FDA-approved drugs. FDA has requested and received nominations for bulk drugs to be included on this list. Twenty of the nominated substances are being proposed for inclusion, which means they would be eligible for use in pharmacy compounding under the exemptions provided by section 503A of the act. As a result, there would be no loss of any sales, or other economic impact, for compounded drug products containing these 20 substances.

FDA has proposed to include some of these substances on the list with a restriction on their route of administration or a requirement that the resulting compounded drug product be for professional office use only. As FDA is unaware that any of these drug substances are currently used in compounding outside of the proposed restrictions, the agency does not expect these restrictions to result in decreased sales of any compounded drug product.

Further, this regulation is not anticipated to impose any other compliance costs on bulk drug manufacturers or compounding pharmacies.

Ten additional nominated substances, while not being proposed for inclusion on the bulk drugs list, are still under review by the agency. As explained more fully in the guidance for industry entitled ''Enforcement Policy During Implementation of section 503A of the Federal Food, Drug, and Cosmetic Act'' (see notice of availability, 63 FR 64723, November 23, 1998), FDA intends to exercise its enforcement discretion regarding these 10 substances. In short, FDA does not intend to take regulatory action against a drug product that has been compounded with one of these substances while the substance is being evaluated during the pendency of this rulemaking proceeding, as long as the compounding complies with the other effective requirements in section 503A of the act and does not appear to present a significant safety risk.

Although usage or sales data for the nominated drug substances is limited, the agency further concludes that even if any of the 10 deferred drug substances were, in the future, to be excluded as candidates for the bulk drugs list, the economic impact would not be significant, particularly not for any substantial number of pharmacies or other small entities. The quantity demanded of these 10 drugs appears to be relatively small, especially when compared to the total number of prescription drugs dispensed annually in the United States. In addition, if any of the 10 substances were ultimately excluded from the list, sales of alternatives to the excluded drugs would be expected to reduce the economic impact of such exclusion.

At the October 1998 meeting of the Pharmacy Compounding Advisory Committee, a representative of the International Academy of Compounding Pharmacists (IACP) presented usage and sales data for four of the deferred substances: 3,4-DAP, 4-AP, hydrazine sulfate, and mild silver protein. According to the IACP representative, the drug substances 3,4-DAP and 4-AP are currently being used in compounding to treat patient populations estimated at 1,000 and 10,000 patients, respectively; hydrazine sulfate is currently being used to treat between 5,000 and 10,000 patients annually; and the annual production of mild silver protein is approximately 9 kilograms. FDA does not have a firm estimate of the number of patients being treated with mild silver protein, but estimates it to be several thousand. Similarly, FDA does not have usage or sales data for the six other deferred drug substances, but estimates that their usage is also relatively low. The agency invites comments and data on any projected loss of sales or other compliance costs directly attributable to this proposal.

If a rule is expected to have a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options to minimize these impacts. Section 503A of the act specifically directs FDA to develop a list of bulk drug substances that may be used in pharmacy compounding. The agency received nominations from the public for 41 bulk drugs to be included on this list. All the nominations are either proposed for inclusion on the list or are still under review. The agency therefore certifies that this proposal will not have a significant economic impact on a substantial number of small entities. The agency invites public comment and data on these issues, specifically the number and size of the bulk drug manufacturers and compounding pharmacies that sell any of the deferred substances, or drug products containing them, and any sales data on these compounded drug products.

The Unfunded Mandates Reform Act requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before proposing any expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million (adjusted annually for inflation) in any 1 year. The publication of FDA's list of bulk drug substances for use in pharmacy compounding is not expected to result in any expenditure of funds by State, local and tribal governments or the private sector. Because the proposed rule is not expected to result in any mandated expenditures, FDA is not required to perform a cost/benefit analysis according to the Unfunded Mandates Reform Act.

VI. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VII. Request for Comments

Interested persons may, on or before March 23, 1999, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 216

Drugs, Pharmacy compounding, Prescription drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 216 be added as follows:

1. Part 216 is added to read as follows:

PART 216—PHARMACY COMPOUNDING

Subpart A—General Provisions [Reserved]

Subpart B—Compounded Drug Products

Sec.

216.23 Bulk drug substances for use in pharmacy compounding.
216.24 [Reserved]

Authority: 21 U.S.C. 351, 352, 353a, 355, 371.

Subpart A—General Provisions [Reserved]

Subpart B—Compounded Drug Products

§ 216.23 Bulk drug substances for use in pharmacy compounding.

(a) The following bulk drug substances, which are neither the subject of a current United States Pharmacopeia or National Formulary monograph nor components of the Food and Drug Administration approved drugs, may be used in compounding under section 503A(b)(1)(A)(i)(III) of the Federal Food, Drug, and Cosmetic Act.

Bismuth citrate.

Caffeine citrate.

Cantharidin (for topical use in the professional office setting only).

Choline bitartrate.

Diloxanide furoate.

Dimercapto-1-propanesulfonic acid.

Ferric subsulfate (for topical use only).

Ferric sulfate hydrate (for topical use only).

Glutamine.

Guaiacol.

Iodoform (for topical and intradental use only).

Metronidazole benzoate.

Myrrh gum tincture (for topical use only).

Phenindamine tartrate.

Phenyltoloxamine dihydrogen citrate.

Piracetam.

Sodium butyrate (for rectal enema use only).

Taurine.
Thymol iodide (for topical use only).
Tinidazole.

(b) FDA balances the following criteria in evaluating substances considered for inclusion on the list set forth in paragraph (a) of this section: The chemical characterization of the substance; the safety of the substance; the historical use of the substance in pharmacy compounding; and the available evidence of the substance's effectiveness or lack of effectiveness, if any such evidence exists.

(c) Based on evidence currently available there are inadequate data to establish substantial evidence or general recognition of the safety or effectiveness of any of the drug substances set forth in paragraph (a) of this section, for any indication.

§ 216.24 [Reserved]

Dated: December 29, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–277 Filed 1–6–99; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[FL–75–1–9806b; FRL 6196]

Designation of Areas for Air Quality Planning Purposes Florida: Redesignation of the Duval County Sulfur Dioxide Unclassifiable Area to Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On January 28, 1997, the Florida Department of Environmental Protection (DEP) submitted a request for redesignation to attainment for sulfur dioxide (SO_2) in Duval County, Florida. The redesignation request included five years of quality assured monitoring data which showed no exceedances of the National Ambient Air Quality Standards (NAAQS) for SO_2. Duval County was originally designated as an unclassifiable area in 1978 due to lack of adequate monitoring data. Sufficient data have now been collected to make affirmative declaration of attainment status. The EPA is redesignating Duval County from unclassifiable to attainment for SO_2 and approving three permits that provide SO_2 emission reductions.

In the Final Rules Section of this **Federal Register**, EPA is approving the Florida State Plan submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates that it will not receive any significant, material, and adverse comments. A detailed rationale for the approval is set forth in the direct final rule and incorporated herein. If no significant, material, and adverse comments are received in response, to this rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action.

DATES: Comments must be received in writing by February 8, 1999.

ADDRESSES: All comments should be addressed to Scott Martin at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104.

Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

FOR FURTHER INFORMATION CONTACT: Scott Martin at (404) 562–9036.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register.**

Dated: November 10, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 99–230 Filed 1–6–99; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 96–86; DA 98–2588]

The Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010, Establishment of Rules and Requirements for Priority Access Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of time for comments.

SUMMARY: This document extends the time to file comments concerning the Commission's *Third Notice of Proposed Rule Making* (''*Third Notice*'') adopted on August 6, 1998. Comments on the *Third Notice* were due on or before January 4, 1999, and Reply Comments were due on or before February 1, 1999. Because of the many petitions for reconsideration and clarification filed in response to the *First Report and Order* (''*First Report*'') in this proceeding and the close proximity of the deadlines for responding to these petitions and the *Third Notice*, the Commission extended the time to file comments.

DATES: Comments are due on or before January 19, 1999, and reply comments are due on or before February 18, 1999.

ADDRESSES: Federal Communications Commission, Office of the Secretary, Publications Branch, Room TW–B204, The Portals II, 445 12th St., SW, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Peter Daronco or Michael Pollak, at the Public Safety & Private Wireless Division, (202) 418–0680.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order* in WT Docket No. 96–86, adopted on December 23, 1998, and released on December 24, 1998, (DA 98–2588). The full text of the *Order* is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M St., NW, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, International Transcription Services, 1231 20th Street, NW, Washington, DC 20036, 202–857–3800. Alternative formats (computer diskette, large print, audio cassette and Braille) are available to persons with disabilities by contacting

Martha Contee at (202) 418–0260, TTY (202) 418–2555, or at mcontee@fcc.gov.

1. On August 6, 1998, the Commission adopted the *First Report* and *Third Notice* concerning the Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010. The *Third Notice* was published in the **Federal Register** on November 2, 1998. *See* 63 FR 58685. Comments on the *Third Notice* are due on or before January 4, 1999, and Reply Comments are due on or before February 1, 1999. On December 4, 1998, the Commission received a *Motion for Extension of Time for Filing Comments in Response to Third Notice of Proposed Rulemaking* filed by the National Public Safety Telecommunications Council (NPSTC).

2. NPSTC requests that the Commission grant a 30 day extension of time for filing comments to the *Third Notice*. It states that an additional 30 days would afford interested parties adequate time to prepare full and complete comments in order that the Commission may develop as complete a record as possible. NPSTC indicates that, in addition to preparing comments in response to the *Third Notice*, many organizations will also be required at the same time to prepare responses to the petitions for reconsideration or clarification that were filed in response to the *First Report*. NPSTC notes that a substantial number of petitions for reconsideration or clarification were filed in this proceeding on or before December 2, 1998. In addition, NPSTC points out that the comment date falls immediately after an extended holiday period making it difficult for NPSTC and others to complete timely comments.

3. It is the policy of the Commission that extensions of time are not routinely granted. Upon review, however, we agree that an extension would afford parties the necessary time to coordinate and file substantive comments for the record. We believe, however, that 30 days would delay this proceeding longer than necessary. A 15 day extension of time, until January 19, 1999, within which to file comments for the *Third Notice* should be sufficient. This extension should provide an adequate opportunity for all parties to prepare and file responsive and complete comments in this proceeding,

Ordering Clauses

It is hereby Ordered that the *Motion for Extension of Time for Filing Comments in Response to Third Notice of Proposed Rulemaking* filed by NPSTC on December 2, 1998, is hereby granted in part and denied in part. Parties shall file comments to the *Third Notice* no later than January 19, 1999. Reply comments are due 30 days later on February 18, 1999.

Federal Communications Commission.

John F. Clark,

Acting Chief, Public Safety & Private Wireless Division

[FR Doc. 99–269 Filed 1–6–99; 8:45 am]

BILLING CODE 6712–01–U

Notices

Federal Register

Vol. 64, No. 4

Thursday, January 7, 1999

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.

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: January 12, 1999; 10:30 A.M.

PLACE: Radio Free Asia Conference Room, Suite 300, 2025 M Street, N.W., Washington, D.C. 20036.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address such issues as the broadcasting budget, preparation of the annual report, the progress of VOA–TV, and steps necessary for implementation of the Foreign Affairs Reform and Restructuring Act of 1998. The BBG meeting will be preceded at 9:00 A.M. by a closed meeting of Board of Directors of the nonprofit private corporation, Radio Free Asia.

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact Brenda Hardnett or John Lindburg at (202) 401–3736.

Dated: January 4, 1999.

Marc B. Nathanson,

Chairman.

[FR Doc. 99–363 Filed 1–4–99; 4:53 pm]

BILLING CODE 8230–01–M

DEPARTMENT OF COMMERCE

Office of the Secretary

Advisory Committees; Annual Reports; Availability

ACTION: Announcing public availability of the report on closed meetings of Advisory Committees.

SUMMARY: The Department of Commerce has prepared its report on the activities of closed or partially closed meetings of advisory committees as required by the Federal Advisory Committee Act.

ADDRESSES: Copies of the report have been filed and are available for public inspection at two locations:

Library of Congress, Newspaper and Current Periodicals Reading Room, Room LM133, Madison Building, 1st and Independence Avenues, SE, Washington, DC 20540

Department of Commerce, Central Reference and Records Inspection Facility, Room 6020, Herbert C. Hoover Building, 14th and Constitution Avenue, NW, Washington, DC 20230, Telephone (202) 482–4115.

SUPPLEMENTARY INFORMATION: The report covers meetings held in FY 97. Thirty committees and one subcommittee report having held closed or partially closed meetings. The names of these committees are listed below:

—Committee of Chairs of the Industry Sector and Industry Functional Advisory Committees for Trade Policy Matters (TPM)
—Industry Sector Advisory Committee (ISAC) on Aerospace Equipment for TPM
—ISAC on Building Products and Other Materials for TPM
—ISAC on Capital Goods for TPM
—ISAC on Chemicals and Allied Products for TPM
—ISAC on Construction, Transportation, Mining and Agriculture Equipment for TPM
—ISAC on Consumer Goods for TPM
—ISAC on Electronics and Instrumentation for TPM
—ISAC on Energy for TPM
—ISAC on Ferrous Ores and Metals for TPM
—ISAC on Footwear, Leather, and Leather Products for TPM
—ISAC on Lumber and Wood Products for TPM
—ISAC on Nonferrous Ores and Metals for TPM
—ISAC on Paper and Paper Products for TPM
—ISAC on Services for TPM
—ISAC on Small and Minority Business for TPM
—ISAC on Textiles and Apparel for TPM
—ISAC on Wholesaling and Retailing for TPM
—Industry Functional Advisory Committee on Customs Matters for TPM
—Industry Functional Advisory Committee on Intellectual Property Rights for TPM
—Industry Functional Advisory Committee on Standards for Information Systems Technical Advisory Committee
—Judges Panel of the Malcolm Baldrige National Quality Award
—Materials Technical Advisory Committee
—National Technical Information Service Advisory Board
—Regulations and Procedures Technical Advisory Committee
—Sensors Technical Advisory Committee
—Subcommittee on Export Administration, President's Export Council
—Transportation and Related Equipment Technical Advisory Committee
—U.S. Automotive Parts Advisory Committee
—Visiting Committee on Advanced Technology

Twenty-five committees report not having held any closed or partially closed meetings.

FOR FURTHER INFORMATION CONTACT: Victoria A. Kruk, Committee Management Officer, Office of the Secretary, Department of Commerce, Washington, DC 20230, Telephone (202) 482–4115.

Dated: December 21, 1998.

Victoria A. Kruk,

Office of Executive Assistance Management.

[FR Doc. 99–289 Filed 1–6–99; 8:45 am]

BILLING CODE 3510–FA–P

DEPARTMENT OF DEFENSE

Defense Finance and Accounting Service

Privacy Act of 1974; System of Records

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The Defense Finance and Accounting Service proposes to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on February 8, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Defense Finance and Accounting Service, 1931 Jefferson Davis Highway, ATTN: DFAS/CEE, Arlington, VA 22240-5291.

FOR FURTHER INFORMATION CONTACT: Mrs. Pauline Korpanty at (703) 607-3832.

SUPPLEMENTARY INFORMATION: The complete inventory of Defense Finance and Accounting Service record system notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and is available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted on 23 December 1998 to the House Committee on Government Reform and Oversight, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996, (61 FR 6427, February 20, 1996).

Dated: December 31, 1998.

L.M. BYNUM,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

T7332c

SYSTEM NAME:

Bankruptcy Processing Files.

SYSTEM LOCATION:

Defense Finance and Accounting Service - Indianapolis Center, 8899 E. 56th Street, Indianapolis, IN 46249–0001.

Defense Finance and Accounting Service - Cleveland Center, 1240 East Ninth Street, Cleveland, OH 44199–2055.

Defense Finance and Accounting Service - Denver Center, 6760 East Irvington Place, Denver, CO 80279–5000.

Defense Finance and Accounting Service - Columbus Center, 4280 East 5th Avenue, Columbus, OH 43219–1879.

Defense Finance and Accounting Service - Kansas City Center, 1500 East 95th Street, Kansas City, MO 64197–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Army, Air Force, Marine, and Navy military members, and Department of Defense civilian employees for whom bankruptcy notice has been received.

Employees of the Executive Office of the President for whom bankruptcy notice has been received.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's court notices, financial statements, certificates for deductions; agreements, military pay vouchers, correspondence between DFAS General Counsel and subordinate units, United States Attorneys, United States District Courts, and other Government agencies relevant to the proceeding.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 137; 11 U.S.C. 101 et. seq.; 31 U.S.C. 3711 and E.O. 9397 (SSN).

PURPOSE(S):

To maintain such information pertaining to individuals who have filed for bankruptcy so that the Department of Defense may take appropriate action, either as an employer or a creditor, to protect its legal obligations and interests arising out of, or as a result of, the bankruptcy proceeding.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To Executive and Judicial Branch entities to provide necessary and appropriate information for purposes related to, or in furtherance of, judicial or administrative proceedings involving an individual who has filed for bankruptcy.

The 'Blanket Routine Uses' published at the beginning of the DFAS compilation of systems of records notices apply to this system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act, 15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966, 31 U.S.C. 3701(a)(3).

The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security Number); the amount, status, and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed by individual's name and/or Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing and authorized to use the record system in performance of their official duties who are properly screened and cleared for need-to-know. Additionally, at some Centers, records are in office buildings protected by guards and controlled by personnel screening and visitor registers.

RETENTION AND DISPOSAL:

Records are retained for 6 years after conclusion of bankruptcy proceedings and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant General Counsel, Defense Finance and Accounting Service - Columbus Center, 4280 East 5th Avenue, Columbus, OH 43219–1879;

Assistant General Counsel, Defense Finance and Accounting Service - Indianapolis Center, 8899 E. 56th Street,Indianapolis, IN 46249–0001;

Assistant General Counsel, Defense Finance and Accounting Service - Cleveland Center, 1240 East Ninth Street, Cleveland, OH 44199–2055;

Assistant General Counsel for Garnishment Operations, Defense Finance and Accounting Service - Cleveland Center, 1240 East Ninth Street, Cleveland, OH 44199–8002;

Assistant General Counsel, Defense Finance and Accounting Service - Denver Center, 6760 East Irvington Place, Denver, CO 80279–5000;

Assistant General Counsel, Defense Finance and Accounting Service - Kansas City Center, 1500 East 95th Street, Kansas City, MO 64197–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Privacy Act Officer at the appropriate DFAS Center.

Individuals should provide name and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address

written inquiries to the Privacy Act Officer at the appropriate DFAS Center.

Individuals should provide name and Social Security Number.

CONTESTING RECORD PROCEDURES:

The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11–R; 32 CFR part 324; or may be obtained from the Privacy Act Officer at any DFAS Center.

RECORD SOURCE CATEGORIES:

From courts, Government records, and similar documents and sources relevant to the proceeding.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–275 Filed 1–6–99; 8:45 am]

BILLING CODE 5000–04–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6215–7]

Call for Peer Reviewers and Data on Aquifer Storage and Recovery Wells, Aquifer Recharge Wells, Saline Intrusion Barrier Wells, Subsidence Control Wells, and Aquifer Remediation Injection Wells; Underground Injection Control (UIC) Class V Study

AGENCY: Environmental Protection Agency.

ACTION: Call for peer review nominations; request for scientific information.

SUMMARY: The Environmental Protection Agency (EPA) is inviting nominations of qualified candidates for peer review committees addressing reports on Class V Underground Injection Control (UIC) Wells. We are also seeking supplementary information, studies, and research pertaining to Aquifer Recharge and ASR Wells.

DATES: Please submit information and nominations by February 1, 1999.

ADDRESSES: Submit to: Ms. Amber Moreen; USEPA; 401 M St., SW (4606); Washington, DC 20460; telephone: (202) 260–4891; e-mail: moreen.amber@epamail.epa.gov.

FOR FURTHER INFORMATION CONTACT: Ms. Anhar Karimjee; Class V Study Manager; USEPA; 401 M St., SW (4606); Washington, DC 20460; telephone: (202) 260–3862; e-mail: karimjee.anhar@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: A study of Underground Injection Control Class V wells is being conducted to satisfy a consent decree with the Sierra Club Legal Defense Fund. The decree requires that a study of all Class V wells not currently slated for regulation be completed by September 1999. The results of the study will be used to help the Agency determine whether to regulate each subclass of Class V well and propose any necessary regulations by April 2001. Wells for which we are seeking experts and information include:

(1) Aquifer Storage and Recovery (ASR) Wells are used to inject fluids for later recovery and use. These wells may have a secondary purpose such as aquifer recharge. EPA is drafting reports which summarize the available information on these wells.

(2) Aquifer Recharge Wells are used to inject fluids to recharge an aquifer. These wells may have secondary purposes such as saline intrusion prevention, subsidence control, or aquifer storage and recovery (ASR).

(3) Saline Intrusion Barrier Wells are used to inject fluids to prevent the intrusion of salt water into an aquifer. These wells may have secondary purposes such as aquifer recharge.

(4) Subsidence Control Wells are used to control land subsidence caused by ground water withdrawal, or over pumping of oil and gas. These wells may have secondary purposes such as aquifer recharge.

(5) Aquifer Remediation Wells are used to clean up, treat, or prevent contamination of underground sources of drinking water (USDWs). Treated ground water (pump and treat), bioremediation agents, or other recovery enhancement materials may be injected into the subsurface via Class V wells. These wells may be associated with RCRA or CERCLA projects.

Nomination of Peer Reviewers

EPA is drafting reports which summarize the available information on these wells. We anticipate that these reports will be from 25 to 40 pages long. The peer reviewers will comment on the technical accuracy and completeness of the draft documents addressing the subclass of injection well. Selection for peer reviewers will be based on demonstrated capability and professional accomplishment in the indicated area of specialization, in the conduct or management of scientific or engineering research and in applying research to ground water issues. Nominations must include a resume describing the educational and professional qualifications of the nominee and the nominee's current address and daytime telephone number. To avoid conflicts of interest, candidates should provide their previous employment and any financial or other interests that could possibly be relevant to the study.

Submission of Information

The UIC program is providing an opportunity for public involvement. While the Agency has drafted a report on these wells, there may be other articles or unpublished studies of which we are not aware. The Agency would greatly appreciate receiving scientific information from the public. The most useful documents for EPA are unpublished studies or other primary technical sources that we may not otherwise obtain through open literature searches. For a list of articles and studies included in the current report, please consult *http://www.epa.gov/ogwdw/uic/cl5study.html.* Also note, if you have submitted information previously there is no need to resubmit that information.

Interested persons should provide a list briefly describing scientific comments, analyses, studies, and other pertinent scientific information they wish to submit. Where possible, documents should be listed in scientific citation format, that is, author(s), title, journal, and date. Please note that the correspondence is a Class V Study Submission, the well subclass it pertains to, and include names, addresses, and telephone numbers of persons to contact for additional information on the submission. The submission should be mailed to the aforementioned address or submitted electronically to moreen.amber@epamail.epa.gov. Information will also be accepted on 3.5'' floppy disks.

Dated: December 28, 1998.

Elizabeth Fellows,

Acting, Director, Office of Ground Water and Drinking Water, Environmental Protection Agency.

[FR Doc. 99–233 Filed 1–6–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6215–8]

Call for Data on Class V Wells Including Agriculture and Storm Water Drainage Wells, Large Capacity Septic Systems and Geothermal Wells; Underground Injection Control (UIC) Class V Study

AGENCY: Environmental Protection Agency.

ACTION: Request for scientific information.

SUMMARY: The Environmental Protection Agency (EPA) is seeking supplementary information, studies, and research pertaining to subclasses of Class V Underground Injection Wells.

DATES: Please submit information in response to this notice by February 1, 1999.

ADDRESSES: Submit to: Ms. Amber Moreen; USEPA; 401 M St., SW (4606); Washington, DC 20460; telephone: (202) 260–4891; e-mail: moreen.amber@epamail.epa.gov.

FOR FURTHER INFORMATION CONTACT: Ms. Anhar Karimjee; Class V Study Manager; USEPA; 401 M St., SW (4606); Washington, DC 20460; telephone: (202) 260–3862; e-mail: karimjee.anhar@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: A study of Underground Injection Control (UIC) Class V wells is being conducted to satisfy a consent decree with the Sierra Club Legal Defense Fund. The decree requires that a study of all Class V wells not currently slated for regulation be completed by September 1999. The results of the study will be used to help the Agency determine whether to regulate each subclass of Class V well and propose any necessary regulations by April 2001. Wells for which we are seeking information include:

(1) Agricultural Drainage Wells include all wells receiving agricultural runoff. This includes improved sinkholes and abandoned drinking water wells receiving agricultural runoff, wells that recharge aquifers with agricultural tail waters, and wells used to drain flood irrigation.

(2) Storm Water Drainage Wells are shallow injection wells designed for the disposal of rain water and melted snow. These wells typically drain paved areas such as streets and parking lots, or roofs. Improved sinkholes and abandoned drinking water wells receiving storm water runoff are considered to be storm water drainage wells.

(3) Large-Capacity Septic Systems are used to dispose of sanitary waste through a septic tank used by a multiple dwelling, business establishment, community, or regional business establishment for the injection of wastes. Systems serving single families and non-residential systems serving less than 20 persons are not included.

(4) Geothermal Wells:

A. Heat Pump/Air Conditioning Return Flow Wells reinject ground water that has been passed through a heat exchanger in order to heat or cool buildings. A heat pump takes thermal energy from the ground water and transfers it to the space being heated. When cooling is required the heat pump removes heat from a building and transfers it to the ground water. For the purposes of the study, only open loop heat pump/AC return flow wells are considered.

B. Direct Heat Return Flow Wells dispose of spent geothermal fluids following the extraction of heat used directly (without conversion to electric power or passed through a heat exchanger) to heat homes, swimming pools, etc.

C. Electric Power Return Flow Wells dispose of spent geothermal fluids following the extraction of heat for the production of electric power.

Submission of Information

The UIC program is providing an opportunity for public involvement. While the Agency conducts a thorough literature search, there may be other articles or unpublished studies of which we are not aware. The Agency would greatly appreciate receiving scientific information from the public. The most useful documents for EPA are unpublished studies or other primary technical sources that we may not otherwise obtain through open literature searches. For a list of articles and studies included in the current report, please consult *http://www.epa.gov/ogwdw/uic/cl5study.html.* Also note, if you have submitted information previously there is no need to resubmit that information.

Interested persons should provide a list briefly describing scientific comments, analyses, studies, and other pertinent scientific information they wish to submit. Where possible, documents should be listed in scientific citation format, that is, author(s), title, journal, and date. Please note that the correspondence is a Class V Study Submission, the well subclass it pertains to, and include names, addresses, and telephone numbers of persons to contact for additional information on the submission. The submission should be mailed to the aforementioned address or submitted electronically to moreen.amber@epamail.epa.gov. Information will also be accepted on 3.5″ floppy disks.

Dated: December 28, 1998.

Elizabeth Fellows,

Acting Director, Office of Ground Water and Drinking Water, U.S. Environmental Protection Agency.

[FR Doc. 99–234 Filed 1–6–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6215–9]

Call for Peer Reviewers and Data on Aquaculture Injection Wells, Mining Wells, Sewage Treatment Effluent Wells, and Other Class V Injection Wells Including Certain Industrial Wells; Underground Injection Control (UIC) Class V Study

AGENCY: Environmental Protection Agency.

ACTION: Call for peer review nominations; request for scientific information.

SUMMARY: The Environmental Protection Agency (EPA) is inviting nominations of qualified candidates for peer review committees addressing reports on Class V Underground Injection Control (UIC) Wells. We are also seeking supplementary information, studies, and research pertaining to Class V UIC Wells.

DATES: Please submit information and nominations in response to this notice by February 1, 1999.

ADDRESSES: *Submit to:* Ms. Amber Moreen; USEPA; 401 M St., SW (4606); Washington, DC 20460; telephone: (202) 260–4891; e-mail: moreen.amber@epamail.epa.gov.

FOR FURTHER INFORMATION CONTACT: Ms. Anhar Karimjee; Class V Study Manager; USEPA; 401 M St., SW (4606); Washington, DC 20460; telephone: (202) 260–3862; e-mail: karimjee.anhar@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: A study of Underground Injection Control Class V wells is being conducted to satisfy a consent decree with the Sierra Club Legal Defense Fund. The decree requires that a study of all Class V wells not currently slated for regulation be completed by September 1999. The results of the study will be used to help the Agency determine whether to regulate each subclass of Class V well and propose any necessary regulations by April 2001. Wells for which we are seeking experts and information include:

(1) Aquaculture Injection Wells dispose of water used for cultivation of marine and freshwater animals and plants.

(2) Mining Wells:

A. In-Situ Fossil Fuel Recovery Wells are used for in-situ recovery of lignite, coal, tar sands, and oil shale. The wells inject water, air, oxygen, solvents, combustibles, or explosives into underground coal or oil shale beds to liberate fossil fuels. Underground coal

gasification (UCG) and in-situ oil shale retorting are two processes which use in-situ fossil fuel recovery injection wells.

B. Solution Mining Wells inject leaching solutions (lixiviants) in order to remove an ore mineral from its original geological setting. The saturated solution is then extracted by a production well, and the target mineral is harvested for processing. Copper, gold, salt, silver, and uranium may all be mined by solution mining processes.

C. Spent Brine Return Flow Wells are used to dispose of the spent brine which result from the extraction of minerals, halogens and other compounds from fluids. These wells are commonly associated with manufacturing facilities that produce specialty chemicals such as boron, bromine, magnesia, or their derivatives.

D. Mine Backfill Wells are wells which inject water, sand, mill tailings, or other mining byproducts in order to control subsidence caused by mining, to dispose of mining byproducts, or to fill sections of a mine.

(3) Sewage Treatment Effluent Wells, which are used by privately or publicly owned treatment works (POTW) to inject treated or untreated domestic sewage through a vertical well or a leachfield. Aquifer Recharge wells, Aquifer Storage and Recovery Wells, Subsidence Control wells, and Saline Intrusion Barrier wells injecting treated or untreated wastewater are considered Sewage Treatment Effluent wells for the purposes of this study.

(4) Other Class V Injection Wells:

A. Industrial Wells not addressed in the proposed rule (July 29, 1998) (63 FR 40586). These include non-contact cooling water return flow wells, laundromats without dry cleaning facilities, carwashes without undercarriage washing or engine cleaning, and food processing disposal wells.

B. Special Drainage Wells include a variety of wells such as potable water tank overflow, construction dewatering, swimming pool drainage, and mine dewatering wells. These drainage wells receive fluids that cannot be classified as agricultural, industrial, or storm water.

C. Experimental Wells are used to test new technologies. Wells will not be classified as experimental if the technology can be considered under an established well subclass. For example, a well used for bioremediation will be classified as an aquifer remediation well.

Nomination of Peer Reviewers

EPA is drafting reports which summarize the available information on these wells. We anticipate that these reports will be from 15 to 40 pages long. We would like peer reviewers to comment on the technical accuracy and completeness of the draft documents addressing these subclasses of wells. Selection for peer reviewers will be based on demonstrated capability and professional accomplishment in the indicated area of specialization, in the conduct or management of scientific or engineering research and in applying research to ground water issues. Nominations must include a resume describing the educational and professional qualifications of the nominee and the nominee's current address and daytime telephone number. To avoid conflicts of interest, candidates should provide their previous employment and any financial or other interests that could possibly be relevant to the study.

Submission of Information

The UIC program is providing an opportunity for public involvement. While the Agency conducts a thorough literature search, there may be other articles or unpublished studies of which we are not aware. The Agency would greatly appreciate receiving scientific information from the public. The most useful documents for EPA are unpublished studies or other primary technical sources that we may not otherwise obtain through open literature searches. For a list of articles and studies included in the current report, please consult *http://www.epa.gov/ogwdw/uic/cl5study.html.* Also note, if you have submitted information previously there is no need to resubmit that information.

Interested persons should provide a list briefly describing scientific comments, analyses, studies, and other pertinent scientific information they wish to submit. Where possible, documents should be listed in scientific citation format, that is, author(s), title, journal, and date. Please note that the correspondence is a Class V Study Submission, the well subclass it pertains to, and include names, addresses, and telephone numbers of persons to contact for additional information on the submission. The submission should be mailed to the aforementioned address or submitted electronically to moreen.amber@epamail.epa.gov. Information will also be accepted on 3.5″ floppy disks.

Dated: December 28, 1998.

Elizabeth Fellows,

Acting Director, Office of Ground Water and Drinking Water, U.S. Environmental Protection Agency.

[FR Doc. 99–235 Filed 1–6–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6215–6]

National Drinking Water Advisory Council Health Care Provider Outreach and Education Working Group Notice of Conference Call

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Under section 10(a)(2) of Public Law 92–423, ''The Federal Advisory Committee Act,'' notice is hereby given that a conference call of the Health Care Provider Outreach and Education Working Group of the National Drinking Water Advisory Council (NDWAC) established under the Safe Drinking Water Act, as amended (U.S.C. S300f et seq.), will be held on January 26, 1999, from 1:00–3:00 p.m., EST. The call will be held at the U.S. Environmental Protection Agency, 401 M Street, SW, Room 1209 East Tower, Washington, DC, 20460. The call is open to the public, but seating will be limited.

The purpose of this call is to review the summary of the December 3–4, 1998 Working Group meeting held in Washington, DC, and to plan the next steps of the group directed towards the development of a recommended Health Care Provider Outreach and Education Strategy for consideration by NDWAC at their Fall 1999 meeting. Statements from the public will be taken on this call as time allows.

For more information, please contact Ron Hoffer, Designated Federal Officer, Health Care Provider Outreach and Education Working Group, U.S. EPA, Office of Ground Water and Drinking Water, Mail Code 4607, 401 M Street SW, Washington, DC 20460. The telephone number is 202/260–7096 and the e-mail address is *hoffer.ron@epa.gov.*

Dated: December 28, 1998.

Charlene E. Shaw,

Designated Federal Officer, National Drinking Water Advisory Council.

[FR Doc. 99–320 Filed 1–6–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6216–1]

The Pribilof General NPDES Permit (General NPDES Permit No. AK–G52–7000)

AGENCY: Environmental Protection Agency, Region 10.

ACTION: Notice of Final General NPDES Permit.

SUMMARY: The Director, Office of Water, EPA Region 10, is issuing General National Pollutant Discharge Elimination System (NPDES) permit no. AK–G52–7000 for seafood processors discharging within three nautical miles (nmi) of the Pribilof Islands, Alaska, and the city of St. Paul, Pribilof Islands, Alaska, pursuant to the provisions of the Clean Water Act, 33 U.S.C. 1251 *et seq.* The Pribilof general NPDES permit authorizes discharges from seafood processing facilities discharging through stationary outfalls on St. Paul and St. George Islands, from the city of St. Paul's wastewater treatment system, and from mobile seafood processing vessels discharging within the three nautical miles of the Pribilof Islands.

The seafood processing facilities and mobile vessels are engaged in the process of fresh and frozen seafoods, including crab, halibut, and sea snails. Discharges authorized by the final permit include seafood processing wastes, processing disinfectants for cleanup and sanitation, treated domestic wastewater, and other wastewaters, including cooling water, gray water (vessels only), freshwater pressure relief water, refrigeration condensate, water used to transfer seafood to a facility, and live tank water. The permit will authorize discharges to waters of the United States in and contiguous to the State of Alaska within three nautical miles of the Pribilof Islands.

The permit does not authorize the discharge of processing wastes and wastewaters from the processing of fish mince or fillets or surimi or fish paste that is washed repeatedly in water then pressed to remove residual water, or from the processing of finfish wastes into fish or bone meal. The permit does not authorize discharges of petroleum hydrocarbons, toxic pollutants, or other pollutants not specified in the permit.

The city of St. Paul collects domestic and sanitary wastes and wastewaters which are treated in a series of septic tanks before discharge into one of the stationary outfalls. The discharge from the city's treatment system commingles with seafood wastes when seafood processing is being done. The Alaska Department of Environmental Conservation (ADEC) has granted a waiver from secondary treatment standards to the city of St. Paul for the discharge of domestic wastewater. This waiver was originally contained in the State's wastewater permit previously issued to the city of St. Paul. In accordance with Alaska State Regulations 18 AAC 72.040(c), ADEC may reduce the level of treatment of domestic wastewater from secondary standards as defined in 18 AAC 72.990(64). The level of treatment may not be less than primary treatment as defined in 18 AAC 72.990(52). The city of St. Paul has a community septic tank that provides primary treatment of the domestic wastewaters. This reduced level of treatment will not impact the overall health of the Bering Sea as a water body and is in conformance with the States antidegradation policy.

The Pribilof Islands contain several areas of special concern, including designated rookeries and critical habitat of the Steller sea lion which is an endangered species; lands owned and managed by the U.S. Fish and Wildlife Service (USFWS) for the protection of birds and bird-nesting areas, land owned and managed by the National Marine Fisheries Service (NMFS) for the protection of the northern fur seals, and portions of the Alaska Maritime National Wildlife Refuge, Bering Sea Unit. In order to protect these areas of special concern, the permit does not authorize discharges year-round within three nautical miles of Walrus Island, a Steller sea lion rookery; within one-half nautical mile of designated Steller sea lion haulouts areas year-round (Seal Lion Rock and Northeast Point on St. Paul and Dalnoi Point and South Rookery on St. George); within one-half nautical mile of rookeries and haulout areas of the northern fur seal during the period between May 1 through December 1; and within one-half nautical mile of seabird nesting areas during the period between May 1 and December 1; and within one-half nautical mile of the Alaska Maritime National Wildlife Refuge, Bering Sea Unit.

The EPA has determined that, on the basis of available information, there will be no unreasonable degradation during the five year period the permit is in effect. Facilities authorized to discharge under this final permit will participate in the data collection and monitoring program and will be required to comply with all conditions of the permit. Permittees will initiate and implement a best management practices and pollution prevention plan, conduct integrity inspections of the stationary outfalls, perform shoreline and receiving water observations for floating solids, and initiate a biological monitoring program to determine if the seabirds and marine mammals interact with the discharge plumes or are attracted to wastes washed up on the shoreline (if any).

Notice of the draft Pribilof seafood processors general NPDES permit was published October 2, 1998, in the **Federal Register** (63 FR 53055) and the Anchorage Daily News.

The final permit is printed below and establishes effluent limitations, standards, prohibitions, monitoring requirements and other conditions on discharges from seafood processors and the city of St. Paul's domestic wastewater treatment system. The conditions are based on material contained in the administrative record, including an ocean discharge criteria evaluation, an environmental assessment, a finding of no significant impact, and a biological evaluation of potential effects on threatened and endangered species. Changes made in response to public comments are addressed in full in a document entitled ''Responses to Public Comments on the Proposed Issuance of the Pribilof General NPDES Permit.'' This document is being sent to all commenters, current permittees, and applicants and is available to other parties from the address below upon request.

ADDRESSES: Unless otherwise noted in the permit, correspondence regarding this permit should be sent to Environmental Protection Agency, Region 10, NPDES Compliance Unit OW–133, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Florence Carroll of EPA Region 10 at the address listed above or telephone (206) 553–1760. Copies of the final Pribilof General NPDES Permit and Response to Comments will be provided upon request to Florence Carroll.

SUPPLEMENTARY INFORMATION: The EPA issues this Pribilof general NPDES permit pursuant to its authority under sections 301(b), 304, 306, 307, 308, 401, 403 and 501 of the Clean Water Act. The fact sheet for the draft permit, the response to comments document, the ocean discharge criteria evaluation, the biological evaluation, the environmental assess, the 401 certification issued by the State of Alaska, and the coastal zone management plan consistency determination issued by the State of Alaska set forth the principal facts and the significant factual, legal, and policy questions considered in the development of the terms and

conditions of the final permit presented below.

The State of Alaska, Department of Environmental Conservation, has issues a Certificate of Reasonable Assurance that the subject discharges comply with the Alaska State Water Quality Standards.

The State of Alaska, Office of Management and Budget, Division of Governmental Coordination, has certified that the Pribilof general NPDES permit is consistent with the approved Alaska Coastal Management Program.

Changes have been made from draft permit to the final permit in response to public comments received on the draft permit and the final coastal management plan consistency determination from the State of Alaska.

The following identifies several specific areas of change, among others, which have been embodied in the final permit: references to accumulations of seafood wastes at the end of the outfalls have been clarified by using absolute language rather than subject and ambiguous words such as appreciable; monitoring for conventional pollutants has been changed to require at least two samples and a maximum of four samples at two week intervals during the winter crab processing season; all permittees authorized under the Permit must participate in the discharge monitoring program; and mobile vessels are not allowed to discharge any wastewaters nor refuel if transit in the exclusion zone is necessary due to conditions that threaten the safety of the vessel.

APPEAL OF PERMIT: Within 120 days following this service of notice of EPA's final permit decision under 40 CFR 124.15, any interested person may appeal the Pribilof general NPDES in the Federal Court of Appeals in accordance with section 509(b)(1) of the Clean Water Act. Persons affected by a general NPDES permit may not challenge the conditions of the permit as a right of further EPA proceedings. Instead, they may either challenge this permit in court or apply for an individual NPDES permit and then request a formal hearing on the issuance or denial of an individual permit.

Dated: December 23, 1998.

Roger Mochnik,

Assistant Director, Office of Water, Region 10, Environmental Protection Agency.

Authorization to Discharge Under the National Pollutant Discharge Elimination System for Seafood Processors and the City of St Paul

[Pribilof General Permit No. AK–52–7000]

In compliance with the provisions of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, (hereafter, CWA or the Act), the owners and operators of seafood processing facilities and vessels are authorized to discharge seafood processing wastes and other designated wastewaters and the City of St. Paul is authorized to discharge treated domestic wastewater within three nautical miles of St. Paul and St. George Islands to receiving waters of the United States named the Bering Sea, in accordance with effluent limitations, monitoring requirements, and other conditions set forth herein.

Upon the effective date of this Permit, it is the controlling document for regulation of seafood processing wastes and other designated wastewaters and of treated domestic wastewater from the city of St. Paul discharged to the Bering Sea, within three nautical miles of the Pribilof Islands, Alaska.

A copy of this Pribilof General Permit must be kept at the facility or on-board the vessel where discharges occur.

Each permittee authorized to discharge under this Permit must submit a new Notice of Intent 60 days prior to the expiration date of the Permit.

This Permit becomes effective February 8, 1999.

This Permit and the authorization to discharge shall expire at midnight on unless administratively extended according to 40 CFR 122.6 February 8, 2004.

Signed this 23rd day of December, 1998.

Roger Mochnik,

Acting Director, Office of Water, Region 10, Environmental Protection Agency.

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1 Authorized Facilities, Authorized Discharges, and Unauthorized Discharges

1.1 Authorized Facilities

Upon receipt and approval of a complete and timely Notice of Intent (NOI) to be Covered, the following facilities are authorized to discharge under this Permit:

1.1.1 Shorebased. Owners and operators of seafood processing facilities discharging through stationary outfalls on St. Paul and on St. George, provided dischargers comply with all requirements and applicable conditions of this Permit.

1.1.2 Vessels. Owners and operators of mobile seafood processing vessels discharging within three nautical miles of St. Paul and St. George Islands, provided the dischargers comply with all requirements and applicable conditions of this Permit.

1.1.3 City of St. Paul. The city's treated domestic wastewater discharging through a stationary outfall at East Landing, provided the city complies with all requirements and applicable conditions of this Permit.

1.2 Authorized Discharges

This Permit authorizes the discharge of the following pollutants subject to the limitations and conditions set forth herein.

1.2.1 Seafood Processing Wastes. Seafood processing wastes, including the waste fluids, organs, flesh, bones, and chitinous shells produced by the conversion of aquatic animals from a raw form to a marketable form, are required to be ground to no larger than 0.5 inches in any dimension prior to discharge.

(a) Seafood wastes from the processing of crab (all species), sea snails, and halibut will be authorized year-round based on the amount projected in an NOI.

(b) Seafood wastes from the processing of finfish, such as salmon, may be authorized based on when the processing is to be done, what amount of waste is to be generated, and where the discharge will be, provided that the finished product is not fillets or mince or surimi and/or fish paste.

1.2.2 Process Disinfectants. Disinfectants added to wash down water and scrubber water to facilitate the removal of wastes and to maintain sanitary standards during processing or to sanitize seafood processing areas.

1.2.3 Treated Domestic Wastewater. Domestic wastewater (consisting of human body wastes from toilets and urinals) and gray water (consisting of shower, bath, laundry, galley wastewater) treated by the St. Paul municipal septic system and the bunkhouse/galley package treatment plant on St. George. Discharges from certified and operable Type I and Type II Marine Sanitation Devices.

1.2.4 Non-process Wastewater. Non-process wastewaters, including non-contact cooling water, freshwater pressure relief water, refrigeration condensate, water used to transfer seafood to the facility, live tank water, and gray water (wastewater discharged from showers, sinks, safety showers, eyewash stations, hand-wash stations, galleys, laundries).

1.3 Non-authorized Discharges

1.3.1 Finfish Processing Wastes. Discharge of wastes and wastewaters from the production of surimi and/or fish paste products that are washed repeatedly in water then pressed to remove residual waste; from the processing of fillets and/or mince from pollock, cod, or any type of finfish; or the processing of seafood wastes into fish or bone meal are not authorized under this Permit.

1.3.2 Marine Sanitation Devices. Discharges from malfunctioning or undersized marine sanitation devices (MSDs) are not authorized under this Permit. No discharge of raw sewage is allowed within U.S. territorial waters (within the three mile limit).

1.3.3 Other. Wastes and pollutants not specifically set out above.

2 Excluded Areas

This Permit does not authorize the discharge of pollutants to areas of concern (i.e., rookeries, haulout areas, nesting areas, and designated critical habitat) for marine mammals, seabirds, and refuges in the following circumstances and areas:

2.1 Marine Mammals

2.1.1 Steller Sea Lion Rookery. Within three nautical miles of Walrus Island year-round, a designated rookery and critical habitat of the Steller sea lion.

2.1.2 Steller Sea Lion Haulouts. Within one-half nautical mile of designated Steller sea lion haulout areas year-round (Sea Lion Rock and Northeast Point on St. Paul and Dalnoi Point and South Rookery on St. George).

2.1.3 Northern Fur Seal Rookeries and Haulouts. Within one-half nautical mile of land owned and/or managed by the National Marine Fisheries Service (NMFS) for the protection of northern fur seal rookeries and haulout areas during the period May 1 through December 1.

2.2 Seabirds

2.2.1 Seabirds. Within one-half nautical mile of land owned and/or managed by the U.S. Fish and Wildlife Service (USFWS) for the protection of seabirds and seabird nesting areas during the period May 1 through September 30.

2.2.2 National Wildlife Refuge. Within one-half nautical mile of the Alaska Maritime National Wildlife Refuge, Bering Sea Unit.

3 Application To Be Covered Under This General NPDES Permit

In order to be authorized under this Permit to discharge any of the pollutants listed in section 1.2 to waters within three nmi of the Pribilof Islands, all operators and owners must apply for coverage. This Permit does not authorize any discharges from facilities that have not applied for nor received authorization to discharge within three nmi of the Pribilof Islands.

3.1 Submittal of a Notice of Intent

An applicant wishing authorization to discharge under this Permit shall submit a timely and complete Notice of Intent (NOI) to EPA and ADEC in accordance with the requirements listed below. A qualified applicant will be authorized to discharge under this Permit upon written notification from EPA and the returned receipt of the signed U.S. Postal Service Certified Mail card. EPA's written notification will include assignment of an NPDES permit number designating coverage under the Pribilof General Permit.

In compliance with the Paperwork Reduction Act, 44 U.S.C. 1501 *et seq.*, the Office of Management and Budget has approved the information required in a Notice of Intent to be equivalent to an NPDES permit application (OMB 2040–008).

3.1.1 Timely NOI. In order to be covered under this Permit, all applicants (including permittees authorized under the previous permit) must submit an NOI no later than 30 days after the issuance date of this Permit or 60 days prior to the start-up of processing operations within three nmi of the Pribilof Islands.

3.1.2 NOI Update. A permittee authorized to discharge under this Permit shall submit to EPA and ADEC an updated NOI when there is any material change in the information submitted in the original NOI including a proposed increase in the amount of

production, additional species of seafood to be processed, and additional types of finished product. Dischargers of treated domestic wastewater must submit an updated NOI if there is any change in the loading or addition of pollutants discharged. Any changes to the original NOI requires a 60 day prior notice period to EPA and ADEC. After consultation with ADEC, EPA will notify the applicant of approval or disapproval.

3.1.4 Individual Permit Requirement. EPA may require any discharger applying for coverage under this general NPDES permit to apply for and obtain an individual NPDES permit in accordance with the 40 CFR 122.28(b)(3).

3.1.5 Expiration of the Permit. Each permittee authorized to discharge under this Permit must submit a new Notice of Intent 60 days prior to the expiration date of this Permit.

3.1.6 Submittal. An applicant shall submit the NOI to:

U.S. Environmental Protection Agency Region 10,
NPDES Compliance Unit OW–133,
1200 Sixth Avenue,
Seattle, Washington 98101
and
Alaska Department of Environmental Conservation,
Attn: Watershed Management Section,
555 Cordova Street,
Anchorage, Alaska 99501

3.2 Information to be Submitted in the Notice of Intent

3.2.1 Previous NPDES Number. The NOI shall include any previous NPDES number(s) and/or state wastewater permit number(s) assigned to the facility or vessel and the ADEC seafood processor license number.

3.2.2 Owner Information. The NOI shall include the name and the complete address and telephone number of the owner of the facility or vessel and the name of the duly authorized representative. If a FAX machine is available at this address, it is useful to provide a FAX number.

3.2.3 Managing Company. The NOI shall include the name and the complete address and telephone number of the managing company of the facility or vessel and the name of the duly authorized representative. If a FAX machine is available at this address, it is useful to provide a FAX number.

3.2.4 Facility or Vessel Information. The NOI shall include the name, address, and telephone number of the facility or vessel. If a FAX machine is available at this address, it is useful to provide a FAX number.

(a) For a shorebased facility, the NOI shall include a description of the physical location of the facility, the location of the outfall terminus using the Global Positioning System (GPS) (latitude/longitude), depth of the outfall, the length of the outfall from shoreline to terminus, and type of grinder; also date of the most recent structural integrity inspection of the outfall and the date of the most recent inspection of grinding size.

(b) For a mobile processing vessel, the NOI shall include the U.S. Coast Guard (USCG) vessel number, vessel length, depth of outfall, and date of most recent pre-operational check.

(c) For seafood processors, the NOI shall include and estimate of the number of seasonal and annual employees of the facility or on the vessel.

(d) For the City of St. Paul and all other domestic wastewater dischargers, the NOI shall include a description of the treatment provided, the amount of people contributing to the system, and the design flow. For MSDs, the NOI shall include when the system was installed, type of system and its capacity in gallons per day, the results of the testing for fecal coliform bacteria and total suspended solids, and when most recent certification was granted.

3.2.5. Projected Production for Seafood Processing. The NOI shall include projected production data based upon historical operations and design capacity on a daily and annual basis. Production data includes the quantity of the raw product(s) by species and the maximum quantity of each raw product which can be processed in a 24-hour day. The NOI shall also include the projected number of operating days per month for the facility or vessel under this Permit.

3.2.6 Discharge Information. The NOI shall include the following information concerning domestic wastewater and MSD discharges from the facility or vessel.

(a) When the USCG approved MSD was installed, type, capacity (gals/day), number of people on vessel, date of CG certification, and the results of total suspended solids and fecal coliform testing when certified; and whether connected to a municipal system or some other means of treatment of domestic wastewater.

(b) What types and amounts of process disinfectants, cooling water, boiler water, cooking water, refrigeration condensate, transfer water, gray water, live tank water, and freshwater pressure relief water.

3.2.7 Signatory Requirement. All NOIs shall be signed by a principal corporate officer or duly appointed representative in accordance with section 12.5.

4 Effluent Requirements

4.1 Seafood Wastes and Wastewater Limitations 4.1.1 Amount of Seafood Waste Discharged. The volume in pounds of seafood processing wastes discharged on a daily or annual basis shall not exceed the amount projected in the Notice of Intent to be Covered under this Permit.

4.1.2 Treatment and Limitation of Seafood Wastes. All seafood process wastes shall be routed through a waste-handling system which prevents the discharge of waste solids no larger than 0.5 inch in any dimension.

(a) Incidental discharges from scuppers or floor drains must be routed through the waste-handling system or screened to no larger than 0.5 inch in any dimension.

(b) Each permittee shall conduct a daily visual inspection of the waste-handling system, including a close observation of the sump or other place of observation for, and removal of, gloves, earplugs, rubber bands, or other equipment used in processing seafood that may inadvertently be discharged through the outfall. Discharge of such items is prohibited. Logs of this daily inspection are to be kept at the facility or on-board the vessel. Summaries of any equipment found and removed shall be submitted with the monthly report.

(c) Each permittee shall conduct an inspection of the waste-handling system every two weeks during the processing season to confirm that the grinder(s) are grinding the seafood wastes to no larger than 0.5 inch in any dimension. Each permittee shall report the date of the most recent inspection on the monthly report.

(d) There shall be no discharge of oil and grease that causes a film, sheen, or discoloration on the surface of the water or adjoining shorelines.

(e) No wastes shall accumulate on the shoreline nor float on the receiving water surface.

4.2 Domestic Wastewater

All domestic wastewater shall be routed through a domestic wastewater treatment system.

4.2.1 Shorebased septic system or other wastewater treatment system. The treatment system must be designed and capable of properly treating and handling the type and volume of domestic wastewater generated.

4.2.2 Marine Sanitation Devices. On-board a USCG-licensed vessel all sewage wastes must be routed through a MSD system that meets the applicable Coast Guard pollution control standards then

in effect (33 CFR part 159: ''Marine sanitation devices'') and discharged in accordance with Coast Guard regulations. Malfunctioning or undersized systems are prohibited.

4.3 Other Seafood Processing Wastewaters

There shall be no discharge of any other wastewaters that contain foam, floating solids, grease, or oily wastes which causes a film, sheen, or discoloration on the water surface, and no discharge of seafood wastes that are deposited on the shoreline or accumulate on the seafloor. Wastewaters that have not had contact with seafood processing wastes are not required to be discharged through the seafood processing waste-handling system. However, all discharges of transfer water, refrigerated sea water, and live tank water shall be discharged below the surface of any receiving waters.

4.4 State Water Quality Standards

All discharges shall be in compliance with Alaska Water Quality Standards (18 ACC part 70).

4.5 Vessel Wastes

Vessels must comply with the requirements outlined in 33 CFR part 151 (''Vessels carrying oil, noxious liquid substances, garbage, municipal or commercial wastes, and ballast water'').

4.6 Discharge Pipe Location and Condition

4.6.1 Stationary Outfalls. Facilities or vessels shall discharge seafood processing wastes through stationary outfalls that are at least fifteen feet below the sea surface at MLLW. The stationary outfalls on St. Paul and St. George shall be inspected for structural integrity, to verify the location relative to original placement, and to verify that there is no accumulation of any seafood processing wastes at the end of the outfall(s). This inspection shall be conducted in years two and four of the Permit within 60 days of the close of the winter crab processing season.

Each permittee shall submit a letter certifying the absence or presence of any seafood processing wastes at the end of the outfalls within 30 days of the inspection in years two and four of the Permit. The letter shall meet the signatory requirements in accordance with section 12.5.

4.6.2 Mobile Vessels. Mobile vessels shall discharge seafood processing wastes at least three feet below the sea surface at MLLW (except for mobile vessels that have through-the-hull discharge points). Permittees shall perform a pre-operational check of the outfall lines at the beginning of each processing season to ensure that it is not broken and extends to at least three feet below the sea surface; the date of the check shall be reported on the appropriate monthly report.

4.6.3 Outfall Problems. There shall be no discharge if the outfall line is severed, fails, leaks, or is displaced from designed specifications or location.

5 Monitoring

5.1 Outfalls

5.1.1 Stationary Outfalls. Shorebased facilities on St. Paul and St. George will be required to conduct an inspection of the condition and integrity of the outfall lines during the second and fourth years of the Permit. While making these inspections, the divers will make note of any seafood processing waste accumulations observed on the seafloor during the inspection. Permittees must report any accumulations to EPA and ADEC (*see* at section 4.6.1) who may require a more extensive seafloor survey as outlined at section 5.2.

5.1.2 Vessels. Mobile vessels will not be required to conduct a seafloor survey unless violations of this Permit occur or new information leads EPA and ADEC to determine that seafloor surveys (as outlined at section 5.2) are necessary.

5.2 Seafloor Monitoring

5.2.1 Purpose. The seafloor monitoring program is to determine compliance with the Alaska water quality standards for settleable residues in marine waters. Alaska Administrative Code (AAC) Part 18.70.020 states that ''(settleable residues) shall not * * * cause a sludge, solids, or emulsion to be deposited * * * on the bottom.''

5.2.2 Objective. The seafloor monitoring program shall determine the areal extent (in square feet) of any continuous deposit of sludge, solids, or emulsion from seafood processing wastes on the seafloor bottom (*see* at section 4.6.1 for requirements concerning the outfall survey).

5.2.3 Applicability. If any accumulations of seafood wastes are found at the end of the outfalls either on St. Paul or St. George, the seafood processing permittees discharging through that particular stationary outfall shall participate in a seafloor survey.

5.2.4 Method. If a seafloor survey is required by EPA and/or ADEC, the survey shall include the following elements:

(a) Areal extent in square feet of any accumulation of seafood wastes;

(b) Description of the size of particles making up the waste pile, the percentage of particles exceeding 0.5 inch in any dimension, and kind of wastes;

(c) Description of the methodology used by the surveyor including transects and location devices;

(d) Description of marine fauna and flora near the survey area;

(e) Dates, time, tidal movements, weather conditions, name and signature of surveyor, name of company, the name of the mobile vessel, if applicable, and NPDES permit number(s); and

(f) Video and/or other photographic documentation of any findings.

5.2.5 Schedule. A seafloor survey as described above will only be required if during surveys of the structural integrity of the stationary outfalls, there is evidence of any accumulation of seafood wastes. The seafood processors discharging through the stationary outfalls will be required to conduct the survey as soon as possible with consideration for local weather and sea conditions.

5.2.6 Submittal. Results of the seafloor survey shall be submitted to EPA and ADEC within 45 days following the completion of the survey. The report shall be signed by the diver and the appropriate company representative. The report shall be submitted to the addresses at section 3.1.6.

5.3 Sea Surface and Shoreline Monitoring

5.3.1 Purpose. The sea surface and shoreline monitoring program is to determine compliance with the Alaska water quality standards for floating residues in marine waters. Alaska Administrative Code Part 18—70.020 states that ''(floating solids, debris, foam and scum) shall not * * * cause a film, sheen, or discoloration on the surface of the water * * * or cause a sludge, solid or emulsion to be deposited * * * upon adjoining shorelines.

5.3.2 Objective. The sea surface and shoreline monitoring program is to provide daily assessment during periods of operation and discharge: For the sea surface monitoring an estimate of the areal extent of continuous films, sheens, or mats of foam; for the shoreline an estimate of the areal extent of deposits of seafood waste solids on the adjacent shore.

5.3.3 Applicability. All seafood processing permittees covered under this Permit shall participate in a sea surface and shoreline monitoring program during all periods of operation and discharge.

(a) Shorebased facilities shall include the harbor areas that are adjacent to their facilities as well as observations of

the shorelines nearest to outfall locations.

(b) Mobile vessels shall conduct sea surface monitoring around and adjacent to their individual vessels.

(c) Shorebased facilities and mobile vessels may participate in a joint survey of appropriate shoreline areas adjacent to where mobile vessels are anchored.

5.3.4 Method. This monitoring program shall include a description of the observation method and equipment used, the name of the surveyor, and where the observations were done. The observation shall include the date and time, an estimate of the area of scum, sheen, film, or foam on the sea surface, and/or the area of sludge, solids, emulsion, or scum deposited on the shoreline. Also any observation of marine mammals and/or seabirds, if any, interacting with the seafood wastes shall be reported. Photographs, video, or other visual documentation are required.

5.3.5 Submittal. The presence of wastes on the shoreline shall be reported by telephone as required at section 10. A written report shall be submitted to EPA and ADEC with the monthly report to the addresses at section 3.1.6.

5.3.6 Waiver. Individual monitoring days may be waived upon notification by FAX to EPA and ADEC (*see* at section 6.1.3) when conditions (e.g., weather or sea conditions) which make this monitoring hazardous to human health and safety.

5.4 Discharge Monitoring

5.4.1 Purpose. The discharge monitoring program is to assess the impact of the discharges from seafood waste and wastewater and treated domestic wastewater on the receiving water quality, sediment, benthic, and biological environment.

5.4.2 Objective. The discharge monitoring program is to provide assessment and characterization of the discharges from shorebased facilities, including domestic wastewater treatment facilities, and from mobile vessels.

5.4.3 Applicability. All permittees authorized to discharge under this Permit shall participate in the discharge monitoring program.

The discharge monitoring program for permittees covered under this Permit may be satisfied by arranging to participate in a joint effort with other permittees.

5.4.4 Methods. The discharge monitoring program shall include the following requirements:

(a) Effluent samples shall be taken after grinding of the seafood processing wastes and before any commingling with any other waste stream.

(b) Treated domestic wastewater discharges from the City of St. Paul, the bunkhouse/galley at St. George, or any other treated domestic wastewater discharge shall be sampled prior to any commingling with other waste streams.

(c) All permittees shall submit a Quality Assurance Plan (QAP) for effluent sampling to EPA for approval. This approval will be in effect for the period of the Permit unless there is a change in the monitoring program. Permittees required to participate in the 2001 sediment chemistry study on St. Paul shall submit a QAP.

(d) Sampling and analysis of all parameters shall be in accordance with the requirements at section 9.1. Samples to be taken shall be grab samples. Flow measurements may be estimated provided the permittee explains the basis for the estimated amounts. EPA Method 1664 for oil and grease has been approved as an alternative test procedure for Region 10.

5.4.5 Monitoring Parameters. The following parameters are to be sampled for effluent, water quality, sediment chemistry, and benthic community monitoring.

(a) Shorebased facilities and mobile vessels shall conduct sampling of the effluent for the following:

Conventional pollutants:	
Biochemical Oxygen Demand (five day).	pH.
Chemical Oxygen Demand.	Oil and Grease.
Total Suspended Solids.	Total residual chlorine.
Total Phosphorous ...	Flow.
Ammonia-N	Total Organic Carbon.
Temperature	
Other pollutants:	
Metals, including Mercury	
Volatile Organic Compounds	

(b) The city of St. Paul, the bunkhouse/galley on St. George, or any other domestic wastewater discharge (other than MSDs), shall conduct sampling of the effluent for the following:

Conventional pollutants:	
Biochemical Oxygen Demand (five day).	Fecal Coliform Bacteria.
Total Suspended Solids.	pH.
Oil and Grease	Flow.
Total Phosphorous ...	Ammonia-N.
Chemical Oxygen Demand.	Total Organic Carbon.
Temperature	
Other pollutants:	
Metals, including Mercury	
Volatile Organic Compounds	

If there is a significant change in the effluent from any tested source that causes concern and/or there are any accumulations on the seafloor, EPA and ADEC may determine that additional sampling and testing is necessary to protect the marine environment. The additional sampling may include a seafloor survey (*see* at section 5.2), water quality, sediment chemistry, and/or benthic community monitoring as follows:

(c) Water quality sampling:	
Dissolved Oxygen	Salinity.
Oil and Grease	Temperature.
Total Phosphorus	Ammonia.
Nitrate/Nitrite	Total Organic Carbon.
Biochemical Oxygen Demand (five-day).	Total Suspended Solids.
Settleable Solids	Total Kjeldahl Nitrogen.
Ortho-phosphate	pH.

(d) Sediment chemistry sampling for conventional pollutants and chemicals of concern

Particle Size	Chemical Oxygen Demand.
Total Organic Carbon	Total Nitrogen.
Total Solids	Total Volatile Solids.
Petroleum Oil Hydrocarbons.	Total Sulfides.
Biochemical Oxygen Demand (five-day).	E. Coli.
Fecal Coliform Bacteria.	Selected Metals (cadmium, copper, zinc, silver).

(e) Benthic community sampling	
Number of Individuals.	Number of Species.
Dominance	Infaunal index.
Abundances of Pollution-sensitive Species	
Abundance of Opportunistic and Pollution-tolerate species	

5.4.6 Location. The locations for discharge monitoring sampling shall be as follows:

(a) Water quality samples shall be taken at St. Paul at (1) four fixed monitoring stations in the vicinity of the stationary outfalls, two approximately 100 meters from point of discharge following the plume (to the south-southwest), one approximately 300 meters from the point of discharge, one approximately 500 meters from the point of discharge; (2) two fixed monitoring stations approximately 0.5

mile off-shore on the south side area of St. Paul, one near English Bay and one near Zolotoi Bay/Village Cove); and (3) three fixed monitoring stations approximately 0.5 miles off-shore on the East Side/East Landing area of St. Paul, one near Sea Lion Rock, one adjacent to Lukanin Point, and one adjacent to Stony Point (control site).

(b) Water quality samples shall be taken at St. George at four fixed monitoring stations in the vicinity of the stationary outfall, two approximately 100 meters from point of discharge following the plume (to the north-northwest), one approximately 300 meters from point of discharge and one approximately 500 meters from point of discharge; a control site station shall be approximately 500 meters to the south of the discharge point.

(c) Sediment chemistry samples shall be taken in conjunction with the seafloor survey along the transects determined by where mobile vessels operated during the previous processing seasons. Stationary outfall locations shall follow the same protocols as the summer 1997 monitoring study.

(d) Benthic community samples shall be also taken in conjunction with the seafloor survey transects for both vessels and stationary outfalls.

(e) Sediment chemistry samples for the summer of 2001 study shall be taken from the area immediately adjacent to the St. Paul stationary outfalls and at one control site.

5.4.7 Schedule. During the effective period of the Permit all permittees authorized to discharge seafood processing wastes and/or treated domestic wastewater through the stationary outfalls on St. Paul or St. George and from mobile vessels shall be required to participate in the discharge monitoring program according to the following schedule:

(a) Shorebased processing facilities shall sample conventional pollutants (see at section 5.4.5(a)) no more than four times but not less than two times during *each* winter crab processing season with the first sampling to be done two weeks after the beginning of the processing season and continuing at two week intervals until the end of the processing season. One of the samples may be taken during a cleanup period.

Shorebased processing facilities operating during the spring, summer, or fall shall sample conventional pollutants during the third year (2001) of the Permit in each waste stream discharge from the processing of different species, i.e., halibut, sea snails, and any other type of seafood.

Metals, including Mercury, and Volatile Organic Compounds shall be sampled *one* time during the winter crab season in the *third year* (2001) of the Permit.

(b) Mobile processing vessels discharging within three nmi of the Pribilof Islands shall sample conventional pollutants (see at section 5.4.5(a)) no more than four times but not less than two times during *each* winter crab processing season with the first sampling to be done two weeks after the beginning of the processing season and continuing at two week intervals until the end of the processing season. One of the samples may be taken during a cleanup period.

Metals, including Mercury, and Volatile Organic Compounds shall be sampled *one* time during the winter crab season in the *third year* (2001) of the Permit.

(c) The city of St. Paul shall sample the discharge at the East Landing manhole for conventional pollutants and volatile organic compounds (see at section 5.4.5(b)) *each* February and May and at least *four times* between August 1 and September 30 during *each* year of the Permit.

Metals, including Mercury, shall be sampled in February 2001 (see other specific requirements at section 8.3.3).

The city may participate in the sampling program with the seafood processing facilities.

(d) The bunkhouse/galley on St. George or any other treated domestic wastewater discharge (other than MSDs) shall be sampled for conventional pollutants (see at section 5.4.5(b)) *one* time during *each* winter crab processing season.

Metals, including Mercury, and Volatile Organic Compounds shall be sampled *one* time during the winter crab season in the *third year* (2001) of the Permit.

(e) The city of St. Paul and the seafood processors discharging through the stationary outfalls on St. Paul shall conduct a sediment chemistry study during the summer of the *third year* (2001) of the Permit in the area immediately adjacent to the stationary outfalls and at one control site. The results of the study shall be submitted by October 31, 2001.

(f) All permittees shall submit a Quality Assurance Plan (QAP) for effluent monitoring to EPA for approval within 30 days of issuance of this Permit, and prior to any sampling. The city of St. Paul and the processors discharging through the stationary outfalls on St. Paul shall submit a QAP for the year 2001 sediment chemistry study by April 30, 2001.

(g) Results of all winter monitoring of conventional pollutants and/or volatile organic compounds shall be submitted within 30 days of being analyzed. The results of the third year winter monitoring program (conventional pollutants, volatile organic compounds, and metals) shall be submitted within 30 days of being analyzed. The results of the summer monitoring program conducted by the shorebased seafood processors in the third year of the Permit (2001) shall be submitted by October 31, 2001.

5.4.8 Waiver. Effluent sampling may be temporarily waived upon notification by telephone or FAX to EPA and ADEC (see at section 6.1.3) when conditions (e.g., local weather or sea conditions) make getting the samples off vessels or to the airport for transport to the laboratory hazardous to human health and safety. This waiver determination will be made on a case-by-case basis.

5.4.9 Submittals. Submittals shall be made to EPA and ADEC to the addresses at section 3.1.6.

5.4.10 Modification of the Monitoring Program. The discharge effluent monitoring program may be modified if, on the basis of any new data, EPA and ADEC determine that the discharge is adversely affecting the marine environment. The modified program may include changes in survey methods, locations, schedule, parameters, and scope.

5.5 Biological Monitoring

5.5.1 Definition. Biological monitoring, for the purposes of this Permit, is defined as observations of marine mammals and/or seabirds and their interaction with discharges from the stationary outfalls or from mobile vessels which may cause floating wastes on the surface of the water or wastes on the shoreline.

5.5.2 Purpose. The biological monitoring program is to gather information on whether or not marine mammals and seabirds interact with the discharges from the shorebased outfalls and mobile vessels.

5.5.3 Objective. The objective is to have specific observations of marine mammals and seabirds and their behaviors with the outfall plume, floating wastes on the receiving waters, accumulated seafood wastes and processing equipment, if present, on the shoreline.

5.5.4 Applicability. The seafood processors authorized to discharge under this Permit are required to make observations of marine mammals and/or seabirds when performing the shoreline and sea surface monitoring program. Members of the community may also take part in this biological monitoring program.

5.5.5 Method. The observers, permittees or members of the community, may use the following questions as a guide to develop a program for reporting observations: whether or not seabirds and marine mammals are attracted to the outfalls and are seen eating the wastes being discharged; whether or not seabirds and marine mammals are attracted to any seafood waste on the shoreline and are feeding on the wastes, getting wastes on their feathers or fur; whether or not the interaction with discharge plumes causes seabirds or marine mammals to accumulate oils on their feathers or fur; whether or not the discharge is attracting gulls or other birds that are not usually found in the Pribilof Islands; identification of the types of marine mammals or seabirds, how many, when, where, behavior; and what were the weather conditions, wind direction, tides, or other pertinent information.

5.5.6 Reporting. This type of observation can be done in conjunction with the shoreline and sea surface monitoring program, including the safety provisions. Any observations of sea lions, northern fur seals, or seabirds near the outfalls, mobile vessels, or shorelines by the seafood processors will be submitted with the monthly reports. Other observers may submit reports to the addresses at section 3.1.6 or fax numbers at section 6.1.3. Photographs or video tapes are good methods to record the biological monitoring.

6 Special Conditions and Requirements

6.1 Discharges from Mobile Vessels

During the period of May 1 to December 1, there shall be no discharges of any kind within the one-half nautical mile of the exclusion zone described at section 2 except as provided below at section 6.1.1 and 6.1.2.

6.1.1 Safety Exception. Notwithstanding the provisions of section 2, mobile processing vessels may anchor within the one-half nmi exclusion zone when conditions exist that would threaten the safety of the vessel or there is no other location that is reachable for the safety of the vessel.

6.1.2 Processing and Transit in the Exclusion Zone. Mobile vessels may complete processing of any raw product on-board the vessel if transit into the exclusion zone is for safety of the vessel. No new product shall be brought on-board or processed. There shall be no discharge of wastewaters including gray water, deck or processing area wash down, net washing, bilge water, MSD treated wastewater, or other materials. There shall be no refueling within the exclusion zone.

6.1.3 Location Reporting. When any processing vessel enters the one-half nautical mile exclusion zone, the permittee must report their location by GPS and the reason for being in the exclusion zone to the appropriate following parties:

EPA—FAX (206) 553–1280 or telephone (206) 553–1846;
and
ADEC—FAX (907) 269–7508 or telephone (907) 269–7500;
and
St. Paul—FAX (907) 546–3194 or telephone (907) 546–3179;
or
St. George—FAX (907) 829–2212 or telephone (907) 859–2263;
and
Local harbor master/public safety office by radio.

6.1.4 Excluded Area Discharge. Mobile vessels must notify EPA and ADEC within 24 hours, either by telephone (206) 553–1846 or (907) 269–7500, respectively) or by FAX (*see* at section 6.1.3) if any discharge of seafood wastes or any other discharge, occurs during the period of May 1 through December 1 within the one-half nautical mile exclusion zone. Any such report must include an official Bering Sea weather report.

6.2 Discharges from Stationary Outfalls

Notwithstanding the provisions of section 2, dischargers (i.e., UniSea, Trident, Arctic Star, city of St. Paul) previously permitted to discharge from the existing stationary outfalls on St. Paul and dischargers (i.e., Snopac, Blue Wave) previously permitted to discharge from the stationary outfall on St. George, may apply for authorization under the Permit, provided that each facility or mobile vessel complies with all other provisions of this Permit.

6.3 Ocean Disposal

Shorebased facilities may dispose of seafood wastes ground to 0.5 inch and unground snail shells by dumping the seafood wastes into depths of at least 45–50 fathoms and at least seven nmi west of St. Paul and at least three nmi west of St. George.

6.3.1 Conditions. Disposal must be done while the vessel is underway. No disposal shall occur if marine mammals and/or a concentration of seabirds (100+ individuals) are observed in the disposal area.

6.3.2 Logs. A log shall be kept of the disposal operations and include the following information:

Dates and start/stop time of each disposal occurrence,

(b) Description and approximate volume of the material being dumped,

(c) The location (GPS) where dumped, and

(d) Notation of weather and wind conditions in the area and Beaufort Sea state.

6.3.3 Submittal. A copy of the log is to be submitted to EPA with the monthly report.

6.4 Pollution Prevention and Best Management Practices for Seafood Processors

Permittees shall discharge from the facility or vessel in accordance with best management practices which address the provisions of the Pollution Prevention Act.

6.4.1 Best Management Practices (BMPs). Best management practices (BMPs) are to control or abate the discharge of pollutants. In-plant management of water and materials has been found to be central in a waste management effort. Materials accounting, audits of in-plant utilization of water and materials, and best management practices are recommended as the profitable approach to waste management in seafood processing plants and vessels.

6.4.2 Development and Implementation. Each seafood processor shall develop and implement a BMP plan which prevents or minimizes the generation and release of pollutants to receiving waters. Mobile vessel operating and discharging more than 0.5 nmi from shore shall implement BMPs which minimize process waste solids and disperse process wastes and wastewaters through mobility. Shorebased facilities shall implement BMPs which focus upon the minimization of process waste solids and wastewaters.

6.4.3 Other Pollution Prevention

(a) The use of disinfectants and other products on-board a vessel or at a shorebased facility shall be used in a way to reduce over-disinfecting or over-use. The disposal of such products and containers shall be in such a way as to reduce potential contamination of the work areas and personnel.

(b) Seafood processors shall comply with existing local ordinances, state and federal law and other health requirements for exclusion of pests (e.g., rats) in and around the shorebased facilities and on-board processing vessels.

(c) Seafood processors shall implement any measures necessary, including employee training, to keep processing equipment (i.e., gloves, ear

plugs, packing bands) out of the discharge.

(d) Good-housekeeping, use of ''green'' products including low phosphate detergents, grease traps in galleys, and any other means of reducing pollution shall become part of the BMP plan.

7 Monthly Reporting Requirements for Seafood Processing Facilities and Vessels

7.1 Schedule

Reporting shall be on a calendar quarter basis; reports are due by the end of the month following any quarter processing occurs in the Pribilof Islands (e.g., January-March report due no later than the 30th of April).

7.2 No Processing

Permittees shall notify EPA and ADEC when no processing occurs during any quarter in the Pribilof Islands, by submitting the form marked ''no processing.''

7.3 Facility Reporting

7.3.1 Vessels. Mobile vessels shall report the following:

(a) Daily GPS log of anchored location or locations while processing; this log to be submitted in both map-charted and written form;

(b) Processing data including number of pounds of raw product processed per day and number of pounds of finished product; and

(c) Seafood wastes, if any, on the shoreline and/or floating solids on the sea surface as described in the sea surface and shoreline monitoring program at section 5.3; and

(d) Results of outfall check and results of grinding size inspection.

7.3.2 Stationary Outfalls. Shorebased facilities or vessels discharging through stationary outfalls shall report the following:

(a) Processing data including number of pounds of raw product processed per day and type and number of pounds of finished product;

(b) Seafood wastes, if any, on the shoreline and/or floating solids on the sea surface as described in the sea surface and shoreline monitoring program at section 5.3; and

(c) Amount, type (if ground or unground), and location of wastes disposed of by ocean dumping as described at section 6.3.

7.4 Signatory Requirement

A permittee shall ensure that the monthly report is signed by a principal officer or a duly appointed company representative in accordance with section 12.5.

7.5 Submittal

The monthly reports shall be submitted to EPA and ADEC. Reports may be sent via FAX (see at section 6.1.3) or mailed to EPA and ADEC (see at section 3.1.6).

7.6 Paperwork Reduction Act

In compliance with the Paperwork Reduction Act, 44 U.S.C. Section 3501, *et seq.*, the Office of Management and Budget has approved the collection of information in a monthly report as equivalent to a discharge monitoring report (OMB No. 2040–0004).

8 Requirements for the City of St. Paul Wastewater Treatment System

8.1 Discharge Limitations

8.1.1 Amount of Discharge. The discharge shall be limited to treatment not to exceed 143,500 gallons/day. Treated wastewater shall be discharged to the Bering Sea via an outfall.

8.1.2 Water Quality. There shall be no discharge of floating solids, garbage, grease, foam, oily waste, or wastewater which may produce a film, sheen, or coloration on surface waters. The discharge shall not cause contamination of surface or ground waters and shall be in compliance with the Alaska Water Quality Standards (18 AAC Part 70).

8.1.3 Adverse Effects. The discharge shall not cause adverse effects on aquatic or terrestrial plant or animal life, their reproduction, or habitat.

8.2 Septic Tank System

8.2.1 Operation and Maintenance. The permittee shall maintain the septic tank system in good working order at all times. The accumulated solids in the septic tanks shall be pumped from the tanks at least every two years and disposed of by an approved method.

8.2.2 Spills. In the event of a spill of sewage on the ground resulting from the operation, maintenance, or failure of the septic tank system, the permittee shall immediately disinfect the area and report the spill as required at section 10.1. Additionally the permittee shall correct the cause of the spill in the shortest practicable amount of time.

8.3 Monitoring

8.3.1 Sampling. The city of St. Paul shall conduct sampling for the pollutants listed at section 5.4.5(b).

8.3.2 Schedule

(a) The city of St. Paul shall sample the effluent discharge at the East Landing manhole for conventional pollutants and volatile organic compounds one time each February and May and at least four times between August 1 and September 30 during each year of the Permit. The results shall be submitted as follows: February sampling by March 31; May sampling by June 30; and the August/September sampling by October 31 of each year.

Metals, including Mercury, shall be sampled in February 2001 and results submitted within 30 days of being analyzed.

The city may participate in the sampling program with the shorebased facilities.

(b) The city shall participate in the sediment chemistry study to be conducted during the summer of the *third* year (2001) of the Permit (*see* at section 8.3.3(b)).

8.3.3 Additional Sampling and Testing

(a) If the volatile organic compounds sampling results from the February 2002 sampling show presence of 1.4-Dichlorobenzene in excess of 0.011 mg/L and/or Toluene in excess of 0.09 mg/L, sampling for volatile organic compounds will be required at Ellerman Heights lift station, Old Town lift station, and at East Landing manhole within 60 days of the March 31 submittal of the February 2002 results.

(b) The city of St. Paul and the seafood processors discharging through the stationary outfalls on St. Paul shall conduct a sediment chemistry study during the summer of the third year (2001) of the Permit in the area immediately adjacent to the stationary outfalls and at one control site. The results of the sediment chemistry study shall be submitted by October 31, 2001.

8.3.4 Quality Assurance Plan. Sampling and testing for effluent shall be conducted according to the prepared Quality Assurance Plan (QAP); the plan is to be submitted to EPA for approval within 30 days of issuance of this Permit, and prior to any sampling. This approval will be in effect for the period of this Permit unless there is a change in the monitoring program.

The QAP for the sediment chemistry study in 2001 shall be submitted by April 30, 2001.

8.3.5 Submittal. Submittals shall be to the addresses at section 3.1.6.

8.4 Waiver From Secondary Treatment

The ADEC grants a waiver from secondary treatment standards to the city of St. Paul for the discharge of sanitary wastes. This waiver was originally contained in the State of Alaska's wastewater permit previously issued to the city of St. Paul.

In accordance with State Regulations 18 AAC 72.040(c), ADEC may reduce the level of treatment of domestic waste from secondary standards as defined in 18 AAC 72.990(64). The level of

treatment may not be less than primary treatment as defined in 18 AAC 72.990(52). The city of St. Paul has a community septic tank that provides primary treatment of the sanitary wastes. This reduced level of treatment will not impact the overall health of the Bering Sea as a water body and is in conformance with the State's antidegradation policy.

8.5 City of St. Paul Pollution Prevention Program

The city of St. Paul shall develop and implement a pollution prevention program to identify hazardous products used in the community in homes and businesses; provide information to the community on the handling and reduction of hazardous products used; recycle hazardous products when and where possible; and establish a collection of hazardous product wastes for the community.

8.5.1 Objective. The objective of this program is to reduce and eliminate the potential for hazardous materials dumped into the city's domestic wastewater treatment system and discharged into the marine environment where there is the potential to impact the marine mammals and seabirds as well as pollute the nearshore areas of St. Paul Island.

8.5.2 Schedule. The pollution prevention program shall be developed and implemented no later than one year after the issuance of the Permit and shall include an information/collection event to be held in June 2001 and in June 2003. A copy of the program shall be submitted to EPA and ADEC (see at section 3.1.6) for review and approval by October 31, 1999.

8.5.3 Monitoring. The effluent sampling for Volatile Organic Compounds in February 2002 will demonstrate the effectiveness of the program. If the conditions at section 8.3.3(a) are met, the city may reduce the monitoring for Volatile Organic Compounds to once in May and once between August 1 and September 30. If any test results show Volatile Organic Compounds (i.e., toluene and/or 1,4-dichlorobenzene) in the discharge, the city shall immediately test at Ellerman Heights lift station, Old Town lift station, and at East Landing manhole to try to find the source.

9 General Monitoring and Records Requirements

9.1 General Monitoring

9.1.1 Monitoring Procedures. Monitoring shall be conducted according to test procedures approved under 40 CFR part 136 or EPA approved methods. EPA Method 1664 for Oil and Grease has been approved as an alternative test procedure for Region 10.

9.1.2 Representative Effluent Sampling. Samples taken in compliance with the effluent monitoring requirements of the Permit shall be collected from the effluent stream prior to discharge into the receiving waters. Samples and measurements shall be representative of the volume and nature of the monitored discharge.

9.2 Records Requirements

9.2.1 Records Contents. All effluent monitoring records shall bear the hand-written signature of the person who prepared them. In addition, all records of monitoring information shall include: The date, exact place, and time of sampling or measurements; the names of the individual(s) who performed the sampling or measurements; the date(s) analyses were performed; the names of the individual(s) who performed the analyses; the analytical techniques or methods used; and the results of such analyses.

9.2.2 Retention of Records. Each permittee shall retain copies of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this Permit, and records of all data used to complete the application for this Permit, for a period of at least five years from the date of the sample, measurement, report, or application. This period may be extended by request of the Director or ADEC at any time.

9.2.3 On-site Availability of Records and Reports. Copies of this NPDES Permit, monitoring reports, and other technical documents required under the Permit shall be maintained on-site where the discharge occurs.

10 Non-Compliance Reporting Requirements

10.1 Twenty-Four Hour Notice of Noncompliance

The following occurrences of noncompliance shall be reported by telephone to EPA (206–553–1846) and ADEC (907–269–7500) within 24 hours from the time the permittee becomes aware of the circumstances:

10.1.1 Endangerment. Any noncompliance which may endanger human health or the environment.

10.1.2 Unanticipated Bypass. Any unanticipated bypass which exceeds any effluent limitations in the Permit (*see* ''Bypass of Treatment Facilities'' at section 11.6).

10.1.3 Upset. Any upset which exceeds any effluent limitation in the Permit (*see* ''Upset Conditions'' at section 11.7).

10.1.4 Environmental Effects. Instances of floating solids, foam, or oily wastes, and/or seafood wastes on the shoreline.

10.2 Written Notice

A written notice of the preceding occurrences of noncompliance shall be provided to EPA and ADEC within five days of the time that a permittee becomes aware of the circumstances which lead to the noncompliance.

10.2.1 Report. The written notice shall contain:

(a) A description of the noncompliance and its cause;

(b) The period of noncompliance, including exact dates and times;

(c) The estimated time noncompliance is expected to continue if it has not been corrected; and

(d) Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

10.2.2 Written Report Waiver. The Director may waive the written report on a case-by-case basis if the telephone report has been received within 24 hours by the NPDES Compliance Unit in Seattle, Washington, by telephone or FAX.

10.2.3 Submittal. Written reports shall be submitted to the addresses at section 3.1.6.

10.3 Other Noncompliance Reporting

A permittee shall document all instances of noncompliance, other than those specified at section 10.1, and submit a written report with the monthly report.

10.4 Planned Changes

A permittee shall give 60 days advance notice to EPA and ADEC of any planned physical alterations or additions to the permitted facility. Notice is required only when the alteration of, or addition to, the facility could result in noncompliance with the explicit effluent limitation of the Permit; the alteration of, or addition to, the facility could significantly change the nature or increase the quantity of pollutants discharged which are not limited explicitly in the Permit; or the alteration of, or addition to, the facility may meet one of the criteria for determining whether the facility is a new source as determined in 40 CFR 122.29(b).

10.5 Notice of New Introduction of Pollutants

The permittee shall provide 60 days advance notice to EPA and ADEC of any new introduction of pollutants into the

treatment works from an indirect discharger which would be subject to sections 301 or 306 of the Act if it were directly discharging those pollutants; and any substantial change in the volume or character of pollutants being introduced into the treatment works by a source introducing pollutants into the treatment works at the time of issuance of the Permit.

10.6 Anticipated Noncompliance

The permittee shall also give advance notice to EPA and ADEC of any planned changes in the permitted facility or activity which may result in noncompliance with Permit requirements.

11 General Compliance Responsibilities

11.1 Duty To Comply

Each permittee shall comply with all conditions of this Permit. Any noncompliance of this Permit constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

Nothing in this Permit shall be construed to relieve authorized permittees of the requirements of applicable federal and state laws or regulations and local laws and ordinances

Except as provided in permit conditions in ''Bypass of Treatment Facilities'' (see at section 11.6) and ''Upset Conditions'' (see at section 11.7), nothing in this Permit shall be construed to relieve a permittee of the civil or criminal penalties for noncompliance.

11.2 Penalties for Violations of Permit Conditions

11.2.1 Civil and Administrative Penalties. Any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be subject to a civil or administrative penalty, not to exceed the maximum amounts authorized by sections 309(d) and 309(g) of the Act and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. 2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. 3701 note).

11.2.2 Criminal Penalties

(a) Negligent Violations. Any person who negligently violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or by both.

(b) Knowing Violations. Any person who knowingly violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the act shall be punished by a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or by both.

(c) Knowing Endangerment. Any person who knowingly violates a permit condition implementing sections 301, 302, 303, 306, 307, 308, 318, or 405 of the Act, and who knows at that time that another person may be placed in imminent danger of death or serious bodily injury shall, upon conviction, be subject to a fine of not more than $250,000 or imprisonment of not more than 15 years, or both. A person which is an organization shall be subject to a fine of not more than $1,000,000.

(d) False Statements. Any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this Act, shall be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or by both.

11.3 Need To Halt or Reduce Activity Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this Permit.

11.4 Duty To Mitigate

A permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this Permit that has a reasonable likelihood of adversely affecting human health or the environment.

11.5 Proper Operation and Maintenance

A permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by a permittee to achieve compliance with the conditions of this Permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when the operation is necessary to achieve compliance with the conditions of this Permit.

11.6 Bypass of Treatment Facilities

11.6.1 Bypass Not Exceeding Limitations. Bypass of treatment is prohibited if such bypass will produce a discharge which exceeds the effluent limitations of the Permit. EPA or ADEC may take enforcement action against a permittee for a bypass, unless:

(a) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment shall have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and

(c) A permittee submitted notices as follows:

Notice of an anticipated bypass. If a permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible, at least 10 days before the date of the bypass.

Notice of an unanticipated bypass. A permittee shall submit notice of an unanticipated bypass as required under ''Noncompliance Reporting'' (see at section 10).

11.6.2 Bypass Approval. EPA and ADEC may approve an anticipated bypass, after considering its adverse effects, if EPA and ADEC determine that it will meet the three conditions listed above at section 11.6.1 of this Permit.

11.7 Upset Conditions

11.7.1 Effect of an Upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if a permittee meets the requirements of section 11.7.2. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

11.7.2 Conditions Necessary for a Demonstration of Upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate through properly signed, contemporaneous operating logs or other relevant evidence that:

(a) An upset occurred and that a permittee can identify the cause(s) of the upset;

(b) The permitted facility was at the time being properly operated;

(c) The permittee submitted notice of the upset as required under ''Reporting

of Noncompliance'' (see at section 10); and

(d) The permittee complied with any remedial measures as required under ''Duty to Mitigate'' (see at section 11.4).

11.7.3 Burden of Proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

11.8 Toxic Pollutants

Each permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Act for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions.

12 General Provisions

12.1 Permit Actions

This Permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by a permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

12.2 Duty to Reapply

If a permittee intends to continue an activity regulated by this Permit after the expiration date of this Permit, a permittee must submit a new NOI 60 days before the expiration of this Permit.

12.3 Duty to Provide Information

A permittee shall furnish to EPA and ADEC, within the time specified in the request, any information that EPA or ADEC may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this Permit, or to determine compliance with this Permit.

A permittee shall also furnish to EPA or ADEC, upon request, copies of records required to be kept by this Permit.

EPA may require any discharger authorized by a general permit to apply for and obtain an individual NPDES permit in accordance with 40 CFR 122.28(b)(3).

12.4 Other Information

When a permittee becomes aware that it failed to submit any relevant facts in a permit application or NOI, or that it submitted incorrect information in a permit application, NOI, or any report to EPA or ADEC, it shall promptly submit the omitted facts or corrected information.

12.5 Signatory Requirements

All applications reports or information submitted to EPA and ADEC shall be signed and certified.

12.5.1 Permit Applications. All permit applications shall be signed as follows:

(a) For a corporation: By a responsible corporate officer.

(b) For a partnership or sole proprietorship: By a general partner or the proprietor, respectively.

(c) For a municipality, state, federal, or other public agency: By either a principal executive officer or ranking elected official.

12.5.2 Required Reports and Information. All reports required by this Permit and other information requested by EPA or ADEC shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(a) The authorization is made in writing by a person described above and submittal to EPA and ADEC, and

(b) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.)

12.5.3 Changes to Authorization. If an authorization under ''Signatory Requirements'' (see at section 12.5) is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of this section must be submitted to EPA and ADEC prior to or together with any reports, information, or applications to be signed by an authorized representative.

12.5.4 Certification. Any person signing a document required by this Permit shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

12.6 Availability of Reports

Except for data determined to be confidential under 40 CFR part 2, all reports prepared in accordance with this Permit shall be available for public inspection at the offices of EPA and ADEC. A permittee may claim certain types of information as business confidential. When the information is submitted in response to a permit requirement, the permittee will need to identify which documents or portions of documents are company confidential (see 40 CFR 2.203(b)). As required by the Act, permit applications, permits, and effluent data shall not be considered confidential.

12.7 Inspection and Entry

A permittee shall allow EPA, ADEC, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon the presentation of credentials and other documents as may be required by law, to enter a permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this Permit; have access to and copy, at reasonable times, any records that must be kept under the conditions of this Permit; inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Permit; and sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

12.8 Oil and Hazardous Substance Liability

Nothing in this Permit shall be construed to preclude the institution of any legal action or relieve a permittee from any responsibilities, liabilities, or penalties to which a permittee is or may be subject under section 311 of the Act.

12.9 Property Rights

The issuance of this Permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state or local laws or regulations.

12.10 Severability

The provisions of this Permit are severable. If any provision of this Permit, or the application of any provision of this Permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this Permit, shall not be affected thereby.

12.11 Transfers

This Permit may be automatically transferred to a new permittee if the current permittee notifies EPA at least 30 days in advance of the proposed transfer date; the notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and EPA does not notify the existing permittee and the proposed new permittee of EPA's intent to modify, or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement.

12.12 State Laws

Nothing in this Permit shall be construed to preclude the institution of any legal action or relieve a permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation under authority preserved by Section 510 of the Act.

13 Definitions and Acronyms

AAC means Alaska Administrative Code.

Accumulation means any deposit of ground or unground solid seafood processing wastes gathered or heaped up at and around the terminus of an outfall which could reasonably be attributed to a discharge from the outfall.

ADEC means Alaska Department of Environmental Conservation.

Bypass means the intentional diversion of waste streams from any portion of a treatment facility.

CFR means the Code of Federal Regulations.

Coastal zone means the waters within three nautical miles of the Pribilof Islands.

Cooling water means once-through non-contact cooling water.

CWA means the Clean Water Act.

Discharge of a pollutant means any addition of any ''pollutant'' or combination of pollutants to ''waters of the United States'' from any ''point source''.

Domestic wastewater means waterborne human wastes and gray water.

EPA means the United States Environmental Protection Agency.

Exclusion zone means within one-half nmi of areas of special concerns or in the case of Steller sea lion rookeries, 3 nmi.

Garbage means all kinds of victual, domestic, and operational waste, excluding fresh fish and parts thereof, generated during the normal operation and liable to be disposed of continuously or periodically except dishwater, gray water, and those substances that are defined or listed in other Annexes to MARPOL 73/78.

GPS means Global Positioning System.

Gray water means materials discharged from sinks, safety showers, eye-wash stations, hand-washing stations, galley, laundries, bath, and shower wastewater which do not contain human body wastes.

Marine environment means that territorial seas, the contiguous zone and the oceans.

Marine sanitation device includes any equipment for installation on-board a vessel which is designed to receive, retain, treat, or discharge sewage, or any process to treat such sewage (discharge of raw sewage is not allowed within the three mile limit of U.S. waters).

MLLW means mean lower low water.

MSD means marine sanitation device.

NMFS means United States National Marine Fisheries Service.

NOI means a ''Notice of Intent,'' that is, an application, to be authorized to discharge under a general NPDES permit.

Pollutant means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.

Seafood means the raw material, including freshwater and saltwater fish and shellfish, to be processed, in the form in which it is received at the processing plant.

Seafood process waste means the waste fluids, organs, flesh, bones, and chitinous shells produced in the conversion of aquatic animals from a raw form to a marketable form.

Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

Sewage means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes.

Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

U.S.C. means United States Code.

USFWS means United States Fish and Wildlife Service.

Water depth means the depth of the water between the surface and the seafloor as measured at mean lower low water (0.0).

[FR Doc. 99–232 Filed 1–6–99; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

December 30, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of

information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before February 8, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, SW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0170.

Title: Section 73.1030, Notification Concerning Interference to Radio Astronomy, Research, and Receiving Installations.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 57.

Estimated Time per Response: 0.5 hours.

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 29 hours.

Total Annual Costs: $8,550.

Needs and Uses: Section 73.1030 requires licensees to provide simultaneous written notification to the Interference Office at Green Bank, WV when an application is filed with the FCC proposing to operate a short-term broadcast auxiliary station; an applicant seeks authority to construct a new broadcast station; or an applicant seeks authority to make changes in the frequency, power, antenna height, or antenna directivity of an existing station within the geographical coordinates of the National Radio Astronomy Observatory site in Green Bank, WV, or the Naval Radio Research Observatory site at Sugar Grove, WV.

On September 26, 1997, the Commission adopted a Report and Order in ET Docket No. 96–2 which established a coordination zone that covers the islands of Puerto Rico, Desecho, Mona, Vieques, and Culebra within the Commonwealth of Puerto Rico. The coordination zone requires applicants for new and modified radio facilities in various communications services within the coordination zone to provide notification of the technical parameters of proposed operations to the Arecibo Radio Astronomy Observatory at the time their applications are submitted to the Commission. Statutory authority for this collection of information is contained in Section 154(i) of the Communications Act of 1934, as amended.

The data are used by the Interference Office to enable them to file comments or objections with the FCC in response to the notification in order to minimize potential harmful interference to the National Radio Astronomy Observatory site located in Green Bank, WV and the Naval Radio Research Observatory in Sugar Grove, WV. The notification to the Arecibo Radio Astronomy Observatory in Puerto Rico will enable the Observatory to receive information needed to assess whether an application's proposed operations will cause harmful interference to the Observatory's operations and will promote efficient resolution of problems through coordination between applicants and the Observatory.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–327 Filed 1–6–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

AGENCY: Federal Election Commission.

DATE & TIME: Tuesday, January 12, 1999 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE & TIME: Wednesday, January 13, 1999 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This hearing will be open to the public.

MATTER BEFORE THE COMMISSION: 1996 Democratic National Convention Committee, Inc.

DATE & TIME: Thursday, January 14, 1999 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor)

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes

Advisory Opinion 1998–26: The Friends of Mary Landrieu, Inc., by counsel, G. Anthony Geldeman, III.

1999 Legislative Recommendations.

Report of the Audit Division on Buchanan for President, Inc.

Report of the Audit Division on Clinton/Gore '96 Primary Committee, Inc.

Report of the Audit Division on Clinton/Gore '96 General Committee, Inc. and Clinton/Gore '96 General Election Legal and Accounting Compliance Fund.

Report of the Audit Division on the Dole for President Committee, Inc. (Primary).

Report of the Audit Division on the Dole/Kemp '96 and Dole/Kemp Compliance Committee, Inc. (General).

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer. Telephone: (202) 694–1220.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 99–378 Filed 1–5–99; 11:15 am]

BILLING CODE 6715–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98F–1034]

Solvay S.A.; Filing of Food Additive Petition; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of December 2, 1998 (63 FR 66549). The document announced the filing of a food additive petition (FAP 8B4634) proposing that the food additive regulations be amended to provide for the expanded safe use of naphthalene sulfonic acid-formaldehyde condensate, sodium salt as an emulsifier in vinylidene chloride copolymer or homopolymer coatings applied to

polypropylene polymer films and polyethylene phthalate polymer films intended for use in contact with food. The document was published with an error. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

In FR Doc. 98–32023, appearing on page 66549 in the **Federal Register** of Wednesday, December 2, 1998, the following correction is made:

On page 66549, in the second column, in the fifth line under the ''SUPPLEMENTARY INFORMATION'' caption, ''(FAP 8B4634)'' is corrected to read ''(FAP 9B4634).''

Dated: December 18, 1998.

George H. Pauli,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–330 Filed 1–6–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Veterinary Medicine Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Veterinary Medicine Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on January 25 and 26, 1999, 8:30 a.m. to 4 p.m.

Location: Holiday Inn, Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

Contact: Jon F. Scheid, Center for Veterinary Medicine (HFV–12), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6514, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12546. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss a proposed framework on how to evaluate the potential public health hazard from resistant pathogens and resistance genes associated with the use of antimicrobials in food animals.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by January 15, 1999. Oral presentations from the public will be scheduled between approximately 9 a.m. and 11 a.m. on January 26, 1999. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before January 15, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 31, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 99–329 Filed 1–6–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–191]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Granting and Withdrawal of Deeming Authority to National Accreditation Organizations and Supporting Regulations in 42 CFR Sections 488.4–9 and 488.201;

Form No.: HCFA–R–191 (OMB# 0938–0690);

Use: The information collected is used by HCFA to determine whether a private accreditation organization's criteria for granting accreditation is equal to or more stringent than the criteria used by Medicare to determine provider and supplier eligibility for participation in the Medicare Program;

Frequency: Quarterly and On occasion;

Affected Public: Not-for-profit institutions, and Business or other for-profit;

Number of Respondents: 5;

Total Annual Responses: 20;

Total Annual Hours: 405.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: December 29, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–284 Filed 1–6–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–79]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Payment Adjustment for Sole Community Hospitals and Supporting Regulations in 42 CFR 412.92;

Form No.: HCFA–R–79 (OMB# 0938–0477);

Use: Hospitals designated as ''Sole Community Hospitals'' that experience a five percent decrease in discharges in one cost reporting period, due to unusual circumstances, beyond its control, may request an adjustment to its Medicare payment amount;

Frequency: On occasion;

Affected Public: Not-for-profit institutions, Business or other for-profit, and State, Local or Tribal Government;

Number of Respondents: 40;

Total Annual Responses: 40;

Total Annual Hours: 160.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, *Attention:* Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: December 24, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–285 Filed 1–6–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–137]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the Information collections referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed prior to the expiration of the normal time limits under OMB's regulations at 5 CFR Part 1320. The Agency cannot reasonably comply with the normal clearance procedures because public harm is likely to result due to the possibility of the Medicare program being unable to recover mistaken payments. The collection of this information is needed in order for Medicare to recover mistaken payments where a group health plan (GHP) should have paid primary to Medicare. Medicare supplies the questionnaire/instructions to identified employers and uses the completed questionnaires to identify situations where Medicare should pay secondary to a GHP for future claims and/or mistakenly paid primary to a GHP in the past. The instructions direct employers to supply information needed for compliance with the Debt Collection Improvement Act of 1996 (DCIA 1996) and reflect Balanced Budget Act of 1997 (BBA 1997) changes to the Medicare Secondary Payer provisions relating to end stage renal disease and third party payers, etc. The information collected for DCIA 1996 compliance will include the names, addresses and tax identification numbers (TINs) of the following entities: the GHP, the insurer, any third party administrator for the GHP, any other plan sponsor, and the claims' processor. (This is in addition to the TIN information which is already collected with respect to the employer.)

The above referenced revisions are critical to HCFA compliance with the DCIA 1996, which in turn is critical to HCFA's goal of obtaining a clean Office of Inspector General (OIG) audit opinion under the Chief Financial Officer Act. One of the factors in obtaining a clean opinion is compliance with applicable statutes and regulations. Additionally, Congress has expressed a continuing interest in agencies' compliance with DCIA 1996.

Thus, additional questions and information were incorporated about these MSP changes in our revised booklet.

We believe that compliance with the Data Match does not impose capital cost. HCFA continues to strive to make the process as efficient as possible. We offer the following supporting information:

A. Employers are only required to complete the questionnaires for those workers who are Medicare beneficiaries (or whose spouses are Medicare beneficiaries.) They do not complete the questionnaire for their entire workforce.

Employers are questioned only when a worker's income is above the tolerance level.

B. All employers may complete the Data Match questionnaire manually (handwritten, typed, etc.).

C. Employers with 20 through 499 employees who are Medicare beneficiaries (or spouses of beneficiaries) for whom they must complete the questionnaires may submit the Data Match Questionnaire via a ''Bulletin Board.'' The use of the ''Bulletin Board'' requires only access to a personal computer and a modem.

D. For large employers, whose business is likely to operate in a mainframe environment with 500 or more employees who are Medicare beneficiaries (or spouses of beneficiaries) for whom they must complete the questionnaires, we offer the option of an electronic media submission of the questionnaire.

In order to capture accurate information in a timely manner, we would like to expedite the review and clearance process of this booklet outside of the normal time frame.

HCFA is requesting OMB review and approval of this collection within eleven working days, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below within ten working days. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

Type of Information Collection Request: Revision of a currently approved collection;

Title of Information Collection: Internal Revenue Service/Social Security Administration/Health Care Financing Administration Data Match and Supporting Regulations in 42 CFR Section 411.20–411.206;

Form No.: HCFA–R–137 (OMB# 0938–0565);

Use: The purpose of this collection is to save the Medicare program, money. MSP is essentially the same concept known in the private insurance industry as coordination of benefits, and refers to those situations where Medicare assumes a secondary payer role (private insurance being the primary payer) for covered services provided to a Medicare beneficiary. It is HCFA's responsibility to implement the various Medicare Secondary Payer (MSP) provisions;

Frequency: Semi-annually;

Affected Public: Federal Government, Individuals or Households, Business or other for-profit, Not-for-profit institutions, Farms, State, and Local or Tribal Government;

Number of Respondents: 276,251;

Total Annual Responses: 276,251;

Total Annual Hours: 1,096,181.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of Information requirements. However, as noted above, comments on these Information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below, within ten working days:

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards Attention: Dawn Willinghan Room N2–14–26 7500 Security Boulevard Baltimore, Maryland 21244–1850; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167 Attn: Allison Herron Eydt, HCFA Desk Officer.

Dated: December 30, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–283 Filed 1–6–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Disadvantaged Assistance Tracking and Outcome Report (DATOR)—NEW. The Health Careers Opportunity Program (HCOP) and the Centers of Excellence (COE) program provide opportunities for under represented minorities and disadvantaged individuals to enter and graduate from health professions schools. The Disadvantaged Assistance Tracking and Outcome Report (DATOR) will be used to track program participants through the health professions pathway to a health professions practice outcome. The current inability to track students' educational progress in the health professions is a major impediment in assessing the outcome of these programs. There is currently no identifier used that transcends the various education levels, professional disciplines, and educational institutions.

The DATOR form, to be completed annually by HCOP and COE grantees, includes basic data on student participants (name; social security number; gender; race/ethnicity; targeted health professions; their status in the educational pipeline from pre-professional through professional training; financial assistance received under sections 736 and 739 of the Public Health Service Act in the form of stipends; fellowships or per diem; and, their employment or practice setting following their entry into the health care work force.)

Estimates of annualized burden are as follows:

Type of form	Number of respondents	Responses per respondent	Hours per response	Total burden hours
DATOR	200	1	1	200

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Wendy A. Taylor, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: December 30, 1998.

James J. Corrigan,

Associate Administrator for Program and Management Support.

[FR Doc. 99–316 Filed 1–6–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–130–1020–00; GP9–0067]

Notice of Meeting of the Eastern Washington Resource Advisory Council

AGENCY: Bureau of Land Management, Spokane District.

ACTION: Meeting of the Eastern Washington Resource Advisory Council; February 3, 1999, in Spokane Washington.

SUMMARY: A meeting of the Eastern Washington Resource Advisory Council will be held on February 3, 1999. The meeting will convene at 8:30 a.m., at the Spokane District Office of the Bureau of Land Management, 1103 N. Fancher, Spokane, Washington 99212–1275. The meeting will adjourn upon conclusion of business, but no later than 4:30 p.m. Public comments will be heard from 10:00 a.m. until 10:30 a.m. If necessary to accommodate all wishing to make public comments, a time limit may be placed upon each speaker. At an appropriate time, the meeting will adjourn for approximately one hour for lunch. Topics to be discussed include: Forest Health, Land Exchanges and an update on the Interior Columbia Basin Ecosystem Management Project.

FOR FURTHER INFORMATION CONTACT: Clifford D. Ligons, Bureau of Land Management, Spokane District Office, 1103 N. Fancher Road, Spokane, Washington 99212–1275; or call 509–536–1200.

Dated: December 31, 1998.

Gary J. Yeager,

Acting District Manager.

[FR Doc. 99–273 Filed 1–6–99; 8:45 am]

BILLING CODE 4310–33–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–41–5700; WYW141848]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW141848 for lands in Campbell County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination. The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW141848 effective September 1, 1998, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Chief, Leasable Minerals Section.

[FR Doc. 99–288 Filed 1–6–99; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–956–98–1420–00]

Colorado: Filing of Plats of Survey

December 30, 1998.

The plats of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215–7093, effective 10:00 am, December 30, 1998. All inquires should be sent to this address.

Township	Range	Meridian	Group No.	Approval date
T. 11 S.,	R. 79 W.	6	1023	November 19, 1998.
T. 12 S.,	R. 79 W.	6	1023	November 19, 1998.

Donald W. Ashbaugh,

Acting Chief, Cadastral Surveyor for Colorado.

[FR Doc. 99–290 Filed 1–6–99; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–957–00–1420–00: GP9–0064]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 37 S., R. 1 E., accepted November 30, 1998
T. 30 S., R. 5 W., accepted December 4, 1998
T. 34 S., R. 5 W., accepted October 23, 1998
T. 28 S., R. 7 W., accepted November 12, 1997

T. 35 S., R. 7 W., accepted October 23, 1998
T. 38 S., R. 8 W., accepted October 23, 1998

Washington

T. 36 N., R. 42 E., accepted December 4, 1998
T. 26 N., R. 13 W., accepted November 23, 1998

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dissmissal affirmed.

The plat(s) will be placed in the open fields of the Oregon State Office, Bureau of Land Management, 1515 S.W. 5th Avenue, Portland, Oregon 97201, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, (1515 S.W. 5th Avenue) P.O. Box 2965, Portland, Oregon 97208.

Dated December 21, 1998.

Robert D. DeViney, Jr.,

Chief, Branch of Realty and Records Services.

[FR Doc. 99–282 Filed 1–6–99; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Air Force Flight Test Center, Edwards Air Force Base, CA

AGENCY: National Park Service, DOI.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Air Force Flight Test Center (AFFTC), Edwards Air Force Base, CA.

A detailed assessment of the human remains was made by AFFTC professional staff in consultation with representatives of the Chemehuevi Indian Tribe of the Chemehuevi Reservation, the San Manuel Band of Serrano Mission Indians of the San Manual Reservation, the Morongo Band of Cahuilla Mission Indians of the Morongo Reservation, and the Colorado River Indian Tribes of the Colorado River Indian Reservation.

SUMMARY: Between 1972 and 1990, human remains representing nine individuals were recovered from five archaeological sites on Edwards Air Force Base (EAFB). These sites include: CA-LAN-1296 (one possible and three probable cremations); CA-KER-2060/H (one cremation and one inhumation); CA-KER-2241 (one interment unknown type); CA-LAN-1158 (one cremation); and CA-KER–796 (one interment, unknown type). No known individuals were identified. Associated funerary objects include three projectile points (two arrow points and one dart point), one bone tool, 18 shell beads, and two modified shell fragments. The ethnohistoric information establishing the relationship between these tribes and the Native American human remains and associated funerary objects consists of ethnographies, language studies, Spanish mission records, oral interviews, and other sources (Earle 1997). No unassociated funerary objects, sacred objects, or objects of cultural patrimony were identified in the collection.

In 1972, one human cranial bone fragment representing one individual was recovered from the surface during legally authorized excavations at the CA-LAN-1296 (AVAS-1; EAFB-1000) site by the Antelope Valley Archaeological Society (AVAS)(EAFB Historic Preservation Office file 72-A). No consultation was done at the time of the discovery of the cranial bone fragment. The cranial bone fragment (ISOCATι 2181; AVAS 1-38a) appears to have been part of a cremation interment. No associated funerary objects were found with the cranial bone fragment.

In 1988, Regional Environmental Consultants (RECON) conducted legally authorized test excavations at CA-LAN-1296 and recovered human bone representing three individuals (Hector et al. 1988). The first individual is represented by 18 unidentified human bone fragments (RECON CAT# 163–119a) that were surface collected from a probable cremation interment in Unit 12 (Locus E). The artifacts found in association with the 18 human bone fragments consist of five *Olivella* sp. shell beads (RECON CATι 163-118, surface) and one *Haliotis* sp. shell fragment (RECON CATι 163-119d, surface). On Edwards AFB, *Olivella* sp. shell beads and *Haliotis* sp.shell generally date to the Gypsum through Late Periods (2000 B.C.-A.D. 1770). The second individual is represented by 180 human bone fragments that were surface collected from a probable cremation interment in Unit 18 (Locus E). The human bone fragments consist of an orbit fragment, distal metacarpal fragment (RECON CATι 163-196a), and 178 unidentified bone fragments (RECON CATι 163-196b-d). The artifacts found in association with the 180 human bone fragments include: one unidentified shell fragment (RECON CATι 163-196f, surface); 12 unidentified shell beads (RECON CATι 163-197, 0-10 cm); one Humboldt dart point (RECON CATι 163-199, 0-10 cm); and one *Olivella* sp. shell bead (RECON CATι 163-201, 10-20 cm). Humboldt dart points and *Olivella* sp. shell beads are diagnostic artifacts of the Gypsum Period (2000 B.C—A.D. 500). The third individual is represented by one human cranial bone fragment (RECON CATι 163-231a, 10-20 cm). The cranial bone fragment was excavated from a probable cremation interment in Unit 21 (Locus D). No associated funerary objects were found with the cranial bone fragment.

The estimated date of occupation at the CA-LAN-1296 site is 5000 B.C.-A.D. 1770 based on the presence of Pinto, Gypsum, Saratoga Springs, and Late Period components (Earle et al. 1997a). Native Americans were not consulted at the time the human remains were recovered from the CA-LAN–1296 site. The human remains were not identified as such until they were examined by Dr. Rose Tyson of the San Diego Museum of Man during the NAGPRA inventory process. The cultural affiliation of the human remains can not be positively determined (Campbell et al. 1997). Ethnohistoric information, however, indicates that the human remains may be affiliated with one of the five tribes (Chemehuevi, Kawaiisu, Kitanemuk, Serrano, or Tataviam) who utilized the region in historic times (Earle 1997). This is supported by the site's location in the vicinity of historic ''Ap'avutsiviat'' or Buckhorn Springs (Earle 1997:59).

In November 1985, the Base Historic Preservation Officer (BHPO), Richard H. Norwood, recovered human bone representing two individuals (one cremation; one inhumation) during an emergency investigation at site CA-KER-2060/H (EAFB-617)(EAFB Historic

Preservation Office files 85-041, 85-0). The first survey of the site by the BHPO was done in April 1985 prior to the construction of a sewage treatment pond (Norwood 1985). The remains were not found at that time. During the construction mechanical grading uncovered the human bone. The BHPO's emergency investigation of the site involved: (1) a surface inspection of ''spoil'' piles; (2) excavation of the inhumation with the assistance of Colonel H.P. Riessen, a US Air Force Reserve physical anthropologist; and (3) the excavation of seven 1 m x 1 m test units in different areas of the site. At the time the human remains were collected, consultations were conducted with Native Americans (Kawaiisu [Lynn Bedabe]) and State and Federal agencies. These included the: State of California Native American Heritage Commission (Annette Ospital); State of California Office of Historic Preservation (Rob Jackson); National Park Service Interagency Archeological Services (Holly Dunbar); and National Park Service Archeological Assistance Division (Deborah Katz).

The first individual at the CA-KER-2060/H site is represented by 239 burned human bone from a cremation interment in Units 1, 5, 6, and 7. The cremation was discovered in a 4 m-square area approximately 5 m west of the inhumation interment described below. The ISOCAT catalog numbers for the interment include: two burned femur fragments (1639b); 46 unidentified bone fragments (1673); 1 unidentified bone fragment (1767); two right lower bicuspid fragments (1813, surface); five long bone fragments, three cranial bone fragments, and small bone fragments (1662, Unit 1, 10-20 cm); 58 unidentified bone fragments and 23 cranial bone fragments (including thick parietal bone indicative of anemia)(1663, Unit 1, 10-20 cm); one tooth fragment, two mandible fragments, seven unidentified bone fragments (1763, 1763a-c, Unit 1, 20-30 cm); one tooth (1739, Unit 5, 10-20 cm); six tooth fragments (including one root and one incisor fragment)(1745, Unit 5, 20-30 cm); one unidentified burned bone (1746, Unit 5, 20-30 cm); one bicuspid fragment with severe occlusal wear (1748, Unit 5, 30-40 cm); 22 long bone fragments, one phalange, and eight cranial bone fragments (1756, Unit 6, 20-30 cm); two tooth fragments (including one bicuspid and one root) and two bone fragments (1757, Unit 6, 20-30 cm); one burned tooth fragment (1664, Unit 7, 10-20 cm); two lower bicuspid fragments (1669, Unit 7, 20-30 cm); one extremely worn right lateral mandibular incisor (1670, Unit 7, 20-30 cm); left mandibular molar fragments with severe occlusal wear (1671, Unit 7, 20-30 cm); and one tooth fragment (1672, Unit 7, 20-30 cm). No artifacts were found in association with the cremated human bone.

The cremated human bone was examined by Colonel H.P. Riessen in 1985 and Dr. Rose Tyson of the San Diego Museum of Man during the NAGPRA inventory process. Reissen's analysis found severe wear present on the occlusal surfaces of the teeth, but no evidence of caries or abscesses (1985:14-16). All sutures on the skull fragments are closed, and are characteristic of a more mature individual. The severe occlusal wear, closed sutures, and robustness of the bone indicate the individual was a 30 or so year old male with possible anemia.

The second individual at CA-KER-2060/H consists of unburned cranial and postcranial bone from an inhumation interment approximately 5 m east of the cremation described above (Riessen 1985; Norwood 1985, 1987). The inhumation did not evidence a burial pit, but it appeared that the grave had been dug to the level of the caliche. Riessen (1985:3) describes the burial as lying in an extended position, face upward with a northwest-southeast orientation; head oriented to the northwest. The ISOCAT catalog numbers for the inhumation include: one tibia fragment (1639a); post-cranial bone (1640); and rib fragment (4279). Three artifacts were found in association with the inhumation, and include two Cottonwood Triangular arrow points (ISOCATι 1481, translucent white chalcedony; ISOCATι 1482, red and white chalcedony) and one bone tool (ISOCATι 1483).

Riessen (1985:13) analyzed the bone from the inhumation in 1985, and concluded that the individual was probably a 32 or so year old male, 5 foot 7 inches in height, who showed no gross evidence of trauma or pathology. At first it was not clear whether the well preserved unburned bone in the inhumation represented a Native American or Euroamerican burial. The platymeric index of the individual's femur, for example, is 84.4, a value close to that of English populations and higher than the mean (74) for Native Americans (Riessen 1985:14). Other indices such as the index of curvature (1.0) and index of torsion (21.45), however, are closer to the mean values for Native American populations. Based on this information and associated Cottonwood Triangular arrow points, one of which was found in close proximity to the individual's left arm, the inhumation appears to be a Native American burial dating to the Saratoga Springs or Late Periods (A.D. 500-1770).

The estimated date of occupation at the CA-LAN-2060/H site is A.D. 500-1770. This is primarily based on the presence of the aforementioned Cottonwood Triangular arrow points with the inhumation (Earle et al. 1997a). It is not possible to positively determine the cultural affiliation of the human remains (Campbell et al. 1997). Ethnohistoric information nevertheless indicates that they are probably affiliated with one of the five historically-documented tribes (Chemehuevi, Kawaiisu, Kitanemuk, Serrano, or Tataviam) in the region (Earle 1997).

In 1987, the BHPO surface collected a fossilized human molar or premolar crown fragment at the CA-KER-2241 (EAFB-907) site (EAFB Historic Preservation Office file 88-A). The discovery of the tooth (ISOCATι 2286) occurred during legally authorized a Base-wide inventory of paleontologic resources by the San Bernardino County Museum (Reynolds 1988:76c, Rochez Ridge paleontological complex). The tooth was found in Locus 4 in the proximity of two chert flakes. The type of interment that the tooth may have been part of is unknown.

Due to the lack of diagnostic artifacts, no determination has been made on the CA-LAN–2241 site's estimated date of occupation. The chronological relationship of the tooth to the site's late Pleistocene paleontological finds is unknown. The cultural affiliation of the human remains also can not be positively determined (Campbell et al. 1997). Ethnohistoric information, however, indicates that the tooth may be affiliated with one of the five tribes (Chemehuevi, Kawaiisu, Kitanemuk, Serrano, or Tataviam) who were present in the region in historic times (Earle 1997).

In 1988, RECON conducted legally authorized test excavations at the CA-LAN-1158 (EAFB-207) site and recovered burned human bone representing one cremated individual (EAFB Historic Preservation Office file 88-E). Native Americans were not consulted at the time the human remains were recovered from the CA-LAN-1158 site. The bone was not identified until they were examined by Dr. Rose Tyson of the San Diego Museum of Man during the NAGPRA inventory process. The individual is represented by a left distal fibula fragment and three probable cranial bone fragments (RECON CATι 163-565a). The human bone was recovered

from a cremation interment in Unit 46 (Locus B)(Hector et al. 1988:27).

The estimated date of occupation at the CA-LAN-1158 site is 2000 B.C.-A.D. 1770 or the Gypsum through Late Periods. This is based on the presence of Cottonwood Triangular arrow points, *Olivella* sp. shell beads, and *Haliotis* sp. shell elsewhere on the site (Earle et al. 1997a). The cultural affiliation of the human remains can not be positively determined (Campbell et al. 1997). Ethnohistoric information, however, indicates that the cremation internment is probably affiliated with one of the five tribes (Chemehuevi, Kawaiisu, Kitanemuk, Serrano, or Tataviam) who utilized the region in historic times (Earle 1997).

In 1990, the BHPO surface collected one burned human tooth representing one individual at the CA-KER-796 (EAFB-199; AVAS-40) site (EAFB Historic Preservation Office file 90a-Jud). No Native Americans were consulted at the time the tooth was discovered. The tooth was not identified as a human remain until it was examined by Dr. Rose Tyson of the San Diego Museum of Man during the NAGPRA inventory process. The type of interment that the tooth came from is unknown although it may have been part of a cremation. The tooth (ISOCATı 4672) is a probable canine with severe occlusal wear, exposed pulp cavity, and secondary dentine formation. Two small areas of enamel are also visible at the root juncture on the lingual and buccal surfaces of the tooth.

No determination has been made on the estimated date of occupation of the CA- KER–796 site. The cultural affiliation of the tooth also can not be positively determined (Campbell et al. 1997). Ethnohistoric information, however, indicates that the tooth may be affiliated with one of the five tribes (Chemehuevi, Kawaiisu, Kitanemuk, Serrano, or Tataviam) who utilized the region in historic times (Earle 1997).

The ethnohistoric information establishing the relationship between these tribes and the Native American human remains and associated funerary objects consists of ethnographies, language studies, Spanish mission records, oral interviews, and other sources (Earle 1997).

Based on the above mentioned information, officials of the Air Force Flight Test Center have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of nine individuals of Native American ancestry. Officials of the Air Force Flight Test Center have also determined that, pursuant to 43 CFR 10.2 (d)(2), the 24 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Air Force Flight Test Center have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Chemehuevi Indian Tribe of the Chemehuevi Reservation, the San Manuel Band of Serrano Mission Indians of the San Manual Reservation, the Morongo Band of Cahuilla Mission Indians of the Morongo Reservation, and the Colorado River Indian Tribes of the Colorado River Indian Reservation.

This notice has been sent to officials of the Chemehuevi Indian Tribe of the Chemehuevi Reservation, the San Manuel Band of Serrano Mission Indians of the San Manual Reservation, the Morongo Band of Cahuilla Mission Indians of the Morongo Reservation, and the Colorado River Indian Tribes of the Colorado River Indian Reservation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact David N. Fuerst or Richard H. Norwood, Air Force Flight Test Center Environmental Management (AFFTC/EM) 5 E. Popson Avenue, Building 2650A, Edwards AFB, CA 93524-1130; telephone: (805) 277-6295, before February 8, 1999. Repatriation of the human remains and associated funerary objects to the Chemehuevi Indian Tribe of the Chemehuevi Reservation, the San Manuel Band of Serrano Mission Indians of the San Manual Reservation, the Morongo Band of Cahuilla Mission Indians of the Morongo Reservation, and the Colorado River Indian Tribes of the Colorado River Indian Reservation may begin after that date if no additional claimants come forward.

The National Park Service is not responsible for the contents of or determinations within this notice.

Dated: December 8, 1998.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–325 Filed 1–6–99; 8:45 am]

BILLING CODE 4310–70–F

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On November 20, 1998, the National Science Foundation published a notice in the **Federal Register** of permit applications received. Permits were issued on December 21, 1998 to the following applicants:

Erland Fogelberg	Permit No. 99–011
Bruce Rheins	Permit No. 99–014
Ron Koger	Permit No. 99–015
Donal Manahan	Permit No. 99–016

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 99–265 Filed 1–6–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub.L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of permit modification received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of requests to modify permits issued to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit modifications requested.

DATES: Interested parties are invited to submit written data, comments, or views with respect to these permit applications by February 1, 1999. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 306–1030.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95–541), has developed regulations that implement the ''Agreed Measures for the Conservation of Antartic Fauna and Flora'' for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

Description of Permit Modification Requested

1. The Foundation issued a permit (99–010) to Dr. Rennie S. Holt on September 25, 1998. The issued permit allows for the censuring, capture, handling and released of up to 80 adult and 1500 Antarctic fur seal (*Arctocephalus gazella*) pups. In addition, up to 40 female/pup pairs would be captured for measurements of energy expenditure, food intake, dive depth, duration, time of day and dive frequency, swim speed and foraging location, as well as attendance—related factors of pup growth using milk extraction and gastric lavage.

The permit holder requests to modify his permit to conduct developmental metabolic studies (capture, tag, bleach mark, respiration rate, isotope) involving an increase of up to 32 animals per annum (16 pups and 16 juveniles). Additional samples will be collected from pups and juveniles currently permitted for capture and handling (respiration rate, up to 15 pups and 10 juveniles per annum; isotope up to 10 juveniles per annum). Samples and specimens will be imported into the United States for further scientific study and analysis.

Location

Cape Shirreff, Livingston Island (SSSI #32), Byers Peninsula (SSSI #6), Shouth Shetland Islands, Antarctic Peninsula.

Dates

February 1, 1999–April 1, 2001.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 99–266 Filed 1–6–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

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SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

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ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 306–1030.

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The applications received are as follows:

1. Applicant	Permit application No. 99–020
Rae Natalie Prosser Goodall ..	.....
Sarmiento 44	.....
9410 Ushuaia	.....
Tierra del Fuego	.....
Argentina	.....

Activity for Which Permit Is Requested

Take

The applicant proposes to salvage dead specimens of birds and mammals that may be encountered while visiting various locations in the Antarctic Peninsula while traveling onboard cruise ships, research vessels or supply ships. The specimens will be used in comparison studies with specimens collected in southernmost South America in a continuation of a long-term project. The specimens will be stored in a museum/laboratory in Estancia Harberton, Tierra del Fuego and would be available for scientific study.

Location

Antarctic Peninsula region.

Dates

February 1, 1999–February 28, 2004.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 99–267 Filed 1–6–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Materials Research; Notice of Meeting in Accordance With the Federal Advisory Committee Act (Pub. L. 92–463, as Amended), the National Science Foundation Announces the Following Meetings

Name: Special Emphasis Panel in Materials Research (1203).

Dates & Times: February 1, 1999; 3:00pm–8:00pm; February 2, 1999; 7:30am–4:30pm.

Place: State University of New York at Stony Brook, Stony Brook, NY.

Type of Meetings: Closed.

Contact Person: Dr. Ulrich Strom, Program Director, Division of Materials Research, Room 1065.37, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1832.

Purpose of Meeting: To provide advice and recommendations concerning progress of Materials Research Science and Engineering Center.

Agenda: To review and evaluate progress of materials Research Science and Engineering Center.

Reason for Closing: The work being reviewed includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the effort.

These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Janet Silva,

Acting Deputy Division Director.

[FR Doc. 99–313 Filed 1–6–99; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review: Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the Paperwork Reduction Act 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirements to be submitted:

1. *The title of the information collection:* 10 CFR 81, Standard Specifications for Granting of Patent Licenses.

2. *Current OMB approval number:* 3150–0121.

3. *How often the collection is required:* Application for licenses are submitted once. Other reports are submitted annually or as other events require.

4. *Who is required or asked to report:* Applicants for and holders of NRC licenses to NRC inventions.

5. *The number of annual respondents:* 0.

6. *The number of hours needed annually to complete the requirement or request:* 35 hours; however, no applications are anticipated during the next three years.

7. *Abstract:* 10 CFR Part 81 establishes the standard specifications for the issuance of licenses to rights in inventions covered by patents or patent applications invested in the United States, as represented by or in the custody of the Commission and other patents in which the Commission has legal rights.

Submit, by March 8, 1999, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimated accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other form of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC, 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 31st day of December 1998.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–281 Filed 1–6–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–237, 50–249, 50–254 and 50–265]

Commonwealth Edison Company; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR–19 and DPR–25, issued to Commonwealth Edison Company (ComEd, the licensee) for operation of the Dresden Nuclear Power Station, Units 2 and 3, located in Grundy County, Illinois and Facility Operating Licenses Nos. DPR–29 and DPR–30, issued to ComEd for operation of Quad Cities Nuclear Power Station, Units 1 and 2, located in Rock Island County, Illinois.

The proposed amendments would relocate, to a licensee-controlled document, the requirement for removal of the Reactor Protection System (RPS) shorting links. Removal of the shorting links enables a non-coincident scram on high neutron flux as detected by any Neutron Instrumentation. The staff's proposed no significant hazards consideration determination for the requested changes was published on December 30, 1998 (63 FR 71964).

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendments requested involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The RPS shorting links are not precursors to any previously evaluated accident. The Source Range Monitors (SRMs), and the ability of the SRMs to provide a RPS trip, are also not precursors to any previously evaluated accident. Therefore, relocating the RPS shorting link requirement to administrative controls [the Updated Final Safety Analysis Report, (UFSAR)] will not increase the probability of an accident previously evaluated.

The RPS shorting links are not assumed to be removed in any accident analysis, and the SRMs are not assumed to provide a RPS trip in any accident analysis. The refueling interlocks and SHUTDOWN MARGIN calculations will continue to provide assurance of reactivity control. Therefore, relocating the RPS shorting link requirements to administrative controls [the UFSAR] will not increase the consequences of an accident previously evaluated.

The RPS shorting link requirements will be relocated to administrative controls that are administered pursuant to the requirements of 10 CFR 50.59, thereby reducing the level of regulatory control. The level of regulatory control has no impact on the probability or consequences of an accident previously evaluated.

Consequently, this proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Relocating the RPS shorting link requirements to administrative controls [the UFSAR] does not create any new failure mechanisms. No new equipment will be installed or utilized, and no new operating conditions will be initiated as a result of this change. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

Does the change involve a significant reduction in a margin of safety?

The refuel interlocks and SHUTDOWN MARGIN calculations will continue to ensure that the reactor stays subcritical in the Refuel Mode. The margin to safety as represented by the SHUTDOWN MARGIN designed into the core and verified in the SHUTDOWN MARGIN calculations will be unaffected by relocation of the RPS shorting link requirements to administrative controls [the UFSAR]. The margin to safety as represented by the fuel bundle drop assumptions protected by the refuel interlocks will be unaffected. In addition, no accident analysis assumes that the RPS shorting links are removed. In addition, the RPS shorting link requirements will be relocated to administrative controls [the UFSAR] for which future change will be evaluated pursuant to the requirements of 10 CFR 50.59. Therefore, there will be no change in the types or significant increase in the amounts of any effluents released offsite, and, thus, these changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments requested involve no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By February 8, 1999, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the: for Dresden, Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450; for Quad Cities, Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendments requested involve no significant hazards consideration, the Commission may issue the amendments and make them immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendments requested involve a significant hazards consideration, any hearing held would take place before the issuance of any amendments.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Pamela B. Stroebel, Senior Vice President and General Counsel, ComEd, P.O. Box 767, Chicago, Illinois, 60690, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated November 30, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the: for Dresden, Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450; for Quad Cities, Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Dated at Rockville, Maryland, this 31st day of December 1998.

For the Nuclear Regulatory Commission.

Robert M. Pulsifer,

Project Manager, Project Directorate III–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 99–280 Filed 1–6–99; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

Summary: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of Information Collection

Financial Disclosure Statement: OMB 3220–0127.

Under Section 10 of the Railroad Retirement Act and Section 2(d) of the Railroad Unemployment Insurance Act, the RRB may recover overpayments of annuities, pensions, death benefits, unemployment benefits, and sickness benefits that were made erroneously. An overpayment may be waived if the beneficiary was not at fault in causing the overpayment and recovery would cause financial hardship. The regulations for the recovery and waiver of erroneous payments are contained in 20 CFR 255 and CFR 340.

The RRB utilizes Form G–423, Financial Disclosure Statement, to obtain information about the overpaid beneficiary's income, debts, and expenses if that person indicates that (s)he cannot make restitution for the overpayment. The information is used to determine if the overpayment should be waived as wholly or partially uncollectible. If waiver is denied, the information is used to determine the size and frequency of installment payments. The beneficiary is made aware of the overpayment by letter and is offered a variety of methods for recovery. One response is requested of each respondent. Completion is voluntary. The RRB proposes no changes to Form G–423.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

[The estimated annual respondent burden is as follows]

Form No.(s)	Annual responses	Time (Min)	Burden (Hrs)
G–423	1,200	85	1,700

Additional Information or Comments

To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 99–287 Filed 1–6–99; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Regulation S–X, SEC File No. 270–3, OMB Control No. 3235–0009

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Information collected and information prepared pursuant to Regulation S–X focus on the form and content of, and requirements for, financial statements filed with periodic reports and in connection with the offer and sale of securities. Investors need reasonably current financial statements to make informed investment and voting decisions.

The potential respondents include all entities that file registration statements or reports pursuant to the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, or the Investment Company Act of 1940.

Regulation S–X specifies the form and content of financial statements when those financial statements are required to be filed by other rules and forms under the federal securities laws. Compliance burdens associated with the financial statements are assigned to the rule or form that directly requires the financial statements to be filed, not to Regulation S–X. Instead, an estimated burden of one hour traditionally has been assigned to Regulation S–X for incidental reading of the regulation. The estimated average burden hours are solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even an representative survey or study of the costs of SEC rules or forms.

Written 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 collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W. Washington, DC 20549.

Dated: December 23, 1998

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–295 Filed 1–6–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23629; 812–11446]

Bergstrom Capital Corporation; Notice of Application December 31, 1998

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for relief from section 2(a)(19) of the Act.

SUMMARY OF APPLICATION: Applicant, a registered investment company, requests an order under section 6(c) of the Act declaring that one of its directors, who also will be a director and officer of the parent company of a registered broker-dealer, will not be deemed an ''interested person'' of applicant.

FILING DATE: The application was filed on December 28, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 25, 1999, and should be accompanied by proof of service on applicant in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549. Applicant: 505 Madison Street, Suite 220, Seattle, Washington 98104–1138.

FOR FURTHER INFORMATION CONTACT: Timothy R. Kane, Senior Counsel, at (202) 942–0615 or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549 (tel. (202) 942-8090).

Applicant's Representations

1. Bergstrom Capital Corporation (''Fund'') is a Delaware corporation registered under the Act as a closed-end management investment company.

2. The Fund's board of directors is composed of five individuals, two of whom are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (''Disinterested Directors'').

3. William H. Sperber, one of the two Disinterested Directors, is also managing director, chief executive officer, and founder of The Trust Company of Washington (''TCW''). TCW is in the process of reorganization whereby it will become a wholly–owned subsidiary of Manzanita Capital, Inc. (''Manzanita''). As part of the reorganization, McAdams Wright Ragen, Inc. (''MWR''), a newly-formed company which is registered as a broker-dealer under the Securities Exchange Act of 1934 (''1934 Act''), will become a wholly-owned subsidiary of Manzanita. MWR will provide brokerage services to high net worth individuals and will not provide brokerage services to institutional investors.

4. As a result of the reorganization, Mr. Sperber will become a director and president of Manzanita. Mr. Sperber's responsibilities will continue to be related to the operations of TCW. Mr. Sperber will not become a director, officer, or employee of MWR, and will not be involved in any way with the day-to-day management of MWR. The reorganization is expected to be consummated on or about January 1, 1999.

Applicant's Legal Analysis

1. Section 2(a)(19)(A)(v) of the Act defines an ''interested person'' of a registered investment company to include any broker-dealer registered under the 1934 Act or any affiliated person of the broker-dealer. Applicant states that Mr. Sperber may be deemed an affiliated person of MWR because he will be a director, president, and shareholder of Manzanita, an entity that controls MWR within the meaning of section 2(a)(9) of the Act. Because Mr. Sperber may be deemed an affiliated person of MWR, Mr. Sperber would be considered an interested person of the Fund.

2. Rule 2a19–12 under the Act provides, in relevant part, that a director of a registered investment company will not be considered an interested person

solely because the director is an affiliated person of a registered broker-dealer, provided that: (1) the broker-dealer does not execute any portfolio transactions for the ''company complex,'' as that term is defined in the rule, engage in any principal transactions with the company complex, or distribute shares of the company complex, for at least six months prior to the time the director is to be considered independent and for the period during which the director continues to be considered independent; (2) the company's board of directors finds that the company and its shareholders will not be adversely affected if the broker-dealer does not engage in transactions for or with the company complex; and (3) no more than a minority of the company's independent directors are affiliated with broker-dealers. The Fund states that it may not rely on rule 2a19–1 in determining Mr. Sperber's status because, as one of only two Disinterested Directors, Mr. Sperber represents more than a minority of the Fund's Disinterested Directors.

3. The Fund requests an order under section 6(c) of the Act declaring that Mr. Sperber will not be deemed an interested person under section 2(a)(19) of the Act. Section 6(c) of the Act provides, in part, that the SEC may exempt any person from any provision of the Act or any rule under the Act if and to the extent the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicant states that its request for relief meets this standard. Applicant asserts that Mr. Sperber's relationship with MWR poses no potential conflict of interest because MWR has not and will not engage in business of any kind with the Fund. Applicant further states that Mr. Sperber will not be involved in the day-to-day management of MWR. In addition, applicant notes that, if the requested relief is granted, only 50% of the Fund's Disinterested Directors will be affiliated with a broker-dealer.

Applicant's Condition

Applicant agrees that any order granting the requested relief will be subject to the following condition:

1. The Fund will comply with all of the requirements of rule 2a19–1 with respect to Mr. Sperber, except paragraph (a)(3) of the rule.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–292 Filed 1–6–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw from Listing and Registration; (Hanger Orthopedic Group, Inc., Common Stock, Par Value $.01 Per Share) File No. 1–10670

December 31, 1998.

Hanger Orthopedic Group, 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:

The Security of the Company has been listed for trading on the Exchange and, pursuant to a Registration Statement on Form 8A which was filed on November 23, 1998, the New York Stock Exchange (''NYSE''). Trading in Company's Security on the NYSE commenced at the opening of business on December 15, 1998, and concurrently therewith the Security was suspended from trading on the Amex.

The Company has complied with the rules of the Exchange by filing with the Exchange a certified copy of preambles and resolutions adopted by the Company's Board of Directors authorizing withdrawal of its Security from listing on the Exchange and by setting forth in detail to the Exchange the reasons for such proposed withdrawal, and the facts in support thereof. In making the decision to withdraw its Security from listing on the Exchange, the Company considered the increase in the Company's visibility and enhanced liquidity of the Security expected to result from listing on the NYSE.

The Exchange has infromed the Company that it has no objection to the withdrawal of the Company's Security from listing on the Exchange.

The Application relates solely to the withdrawal from listing of the Company's Security from the Exchange and shall have no effect upon the continued listing of the Security on the NYSE.

By reason of Section 12(b) of the Act and the rules and regulations of the Commission, the Company shall continue to be obligated to file reports under Section 13 of the Act with the Commission and the NYSE.

Any interested person may, on or before January 28, 1999, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the infromation 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.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–294 Filed 1–6–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26963]

Filings Under the Public Utility Holding Company Act of 1935, as amended (''Act'')

December 31, 1998.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the applications(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by January 26, 1999, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or,

in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After January 26, 1999, the application(s), as filed or as amended, may be granted and/or permitted to become effective.

Columbia Energy Group (70–9425)

Columbia Energy Group (''Columbia''), a registered holding company, located at 13880 Dulles Corner Lane, Herndon, VA 20171–4600, has filed an application-declaration under section 6(a)(2), 7 and 12(e) of the Act, and rules 62 and 65 under the Act.

Columbia proposes to amend its Restated Certificate of Incorporation to: (1) increase the number of shares of common stock authorized to be issued from 100 million to 200 million; and (2) reduce the par value of its capital stock from $10 to $.01 per share (''Proposed Amendment''). Columbia has no immediate plans for the additional shares of the common stock. However, the increase in authorized shares may be used in connection with future stock splits in the form of stock dividends, acquisitions and other transactions, employee benefit plans and for other corporate purposes. The change in par value is intended to bring Columbia in line with the practice of other corporations, including registered holding companies, which already have so-called ''penny'' par stock. The reduction in par value would also mitigate the effect on Columbia's retained earnings account in the event that the company declared another stock split in the form of a stock dividend. The proposed reduction in par value would be affected by a reduction in the capital stock account and a corresponding increase in the additional paid in capital account and thus would have no impact on Columbia's capital structure.

The Proposed Amendment has been declared advisable by the Board of Directors of Columbia and its adoption requires the favorable vote of the holders of a majority of the outstanding shares of common stock of Columbia. Columbia plans to submit the Proposed Amendment for consideration and action by its shareholders and to solicit proxies from its shareholders.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–293 Filed 1–6–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of January 11, 1999.

An open meeting will be held on Tuesday, January 12, 1999, at 10:00 a.m. A closed meeting will be held on Tuesday, January 12, 1999, following the 10:00 a.m. open meeting.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Johnson, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the open meeting scheduled for Tuesday, January 12, 1999, at 10:00 a.m., will be:

The Commission will hear oral argument in an appeal by Robert J. Sayegh from an administrative law judge's initial decision. For further information, contact Patricia Albrecht at (202) 942–0950.

The subject matter of the closed meeting scheduled for Tuesday, January 12, 1999, following the 10:00 a.m. open meeting, will be:

Post argument discussion.

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: January 5, 1999.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–409 Filed 1–5–99; 2:34 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40836; File No. SR–Amex–98–40]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by American Stock Exchange, LLC Relating to Mandatory Year 2000 Testing

December 28, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 14, 1998, as amended on December 21, 1998,[3] the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal and Amendment No. 1 thereto on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Amex proposes to adopt new Rule 430, Mandatory Participation in Year 2000 Testing, that would require member firms to participate in computer system testing designed to prepare for the Year 2000 and to file reports with the Amex.

The text of the proposed rule change is below. Proposed new language is italicized.

* * * * *

Rule 430

Mandatory participation in Year 2000 Testing

Rule 430. Each member and member organization shall participate in industry testing of computer systems

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Geraldine M. Brindisi, Vice President and Corporate Secretary, Amex, to Michael Walinskas, Deputy Associate Director, Division of Market Regulation, Commission, dated December 18, 1998. The original filing was not noticed in the **Federal Register**.

designed to prepare for Year 2000, in a manner and frequency prescribed by the Exchange, and shall provide to the Exchange reports related to such testing as requested by the Exchange.

Each member and member organization that clears securities transactions on behalf of other broker-dealers must take reasonable measures to ensure that each broker-dealer for which it clears securities transactions conducts testing with such member and member organization.

Commentary

01. The Exchange may exempt a member or member organization from this requirement if that member or member organization cannot be accommodated in the testing schedule by the organization conducting the test or if the member or member organization does not employ computers in its business or for other good reasons.

02. A member or member organization that is subject to the rule and fails to participate in the tests or fails to file any required reports may be subject to disciplinary action pursuant to the Exchange's rules.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex 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 the Statutory Basis for, the Proposed Rule Change

(1) Purpose

The securities industry has been considering proper systems preparation in order to avoid potential computer problems associated with the approach of the Year 2000. The primary concern is that computer systems may incorrectly read the date ''01/01/00'' as being the Year 1900 or another incorrect date.

This concern has been addressed by the Exchange in stages, which have included assessment of the problem, implementation of corrective measures, internal testing, and ''BETA'' testing. The next stage involves industry-wide testing of computer systems. Test participants are scheduled to include, among others, exchanges, registered clearing corporations and depositories, data processors and broker-dealers.

Testing by and among a broad range of securities industry participants will be of critical importance to ensure that the markets continue to operate efficiently after January 1, 2000. To facilitate testing on an integrated, industry-wide basis, the Securities Industry Association (SIA) has undertaken to coordinate these efforts. The first test is scheduled for March 6, 1999.

Rule 430 is proposed to specifically authorize the Exchange to require that members and member organizations participate in such industry testing of computer systems in a manner and frequency as may be prescribed by the Exchange. Among other things, this testing may include the industry-wide test being coordinated by the SIA, all prerequisite testing for the integrated industry-wide test, point-to-point testing and such other testing as the Exchange deems necessary and appropriate. Members and member organizations that clear securities transactions on behalf of other broker-dealers will be expected to take reasonable measures to ensure that each broker-dealer for which they clear securities transactions will conduct testing with such members and member organizations. Members and member organizations will also be required to provide, as requested by the Exchange, reports including, but not limited to, reports about preparation for testing and test results. The rule contemplates that the Exchange can exempt a member or member organization from this requirement if that member or member organization cannot be accommodated in the testing schedule by the organization conducting the test or if the member or member organization does not employ computers in its business or for other good reasons.

A member or member organization that is subject to the rule and fails to participate in the tests or fails to file any required reports may be subject to disciplinary action pursuant to the Exchange's rules.

Similar rule changes have been filed by the New York Stock Exchange and the National Association of Securities Dealers.

(2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[4] in general, and furthers the objectives of Section 6(b)(5)[5] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex believes that the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission has concluded, for the reasons set forth below, that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder. Mandating Year 2000 testing and reporting is consistent with Section 6(b)(95) of the Act, which, among other aspects, requires that the rules of an exchange promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and a national market system. The Commission believes that the proposed rule change will facilitate the Amex's and member firms' efforts to ensure the securities markets' continued smooth operation during the period leading up to and beyond January 1, 2000.

The Exchange has requested that the Commission approve the proposed rule change prior to the thirtieth day after publication of the proposal in the **Federal Register**, because members and member organizations need to promptly

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

begin preparing for industry-wide testing. The Commission finds good cause for approving the proposed rule change, including Amendment No. 1 thereto, prior to the 30th day after the date of publication of notice of the filing in the **Federal Register**. It is vital that SROs such as the Amex have the authority to mandate that their member firms participate in year 2000 testing and that they report test results (and other Year 2000 information) to their SROs. The proposed rule change will help the Amex participate in coordinating Year 2000 testing, including industry-wide testing, and in remediating any potential Year 2000 problems. This, in turn, will help ensure that the industry-wide tests and the Amex's Year 2000 efforts are successful. The proposed rule change will also help the Amex work with its member firms, the SIA, and other SROs to minimize any possible disruptions the Year 2000 may cause.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–98–40 and should be submitted by January 28, 1999.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[6] that the proposed rule change and Amendment No. 1 thereto is hereby approved on an accelerated basis.[7]

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–312 Filed 1–6–99; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78s(b)(2).

[7] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 40861; File No. SR–BSE–98–14]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to its Arbitration Rules

December 29, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 9, 1998[3] the Boston Stock Exchange, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which items have been prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to amend its arbitration rules regarding arbitration of employment discrimination claims. The text of the proposed rule changes are as follows; additions are italicized.

* * * * *

CHAPTER XXXII

Arbitration

Arbitration Code

Sec. 1(a) Members—*Except as provided in subparagraph (c)(1) below,* . . .

(b) Customers or Non-Members—*Except as provided in subparagraph (c)(1) below,* . . .

(c) Jurisdiction—. . .

(1) A claim alleging employment discrimination, including any sexual harassment claim, in violation of a statute should be eligible for arbitration only where the parties have agreed to arbitrate the claim after it has arisen.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The purpose of the proposed rule change is to amend the Exchange's arbitration rules to exclude from mandatory arbitration any employee dispute between a registered representative or associated persons and a member organization alleging employment discrimination in violation of a statute, including sexual harassment, unless the parties to arbitrate the claim after it has arisen. This change follows the lead of the New York Stock Exchange (''NYSE'')[4] and the National Association of Securities Dealers (''NASD'')[5] concerning arbitration of employment discrimination claims in their respective fora, and is intended to prevent such claims from finding haven in the Exchange's arbitration forum unless there is a post-dispute arbitration agreement.

(b) The statutory basis for the proposed rule change is Section 6(b)(5) of the Exchange Act, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4

[3] Technical, non-substantive corrections were made pursuant to a December 29, 1998 conversation between Karen Aluise, Boston Stock Exchange, and Kathy England, Assistant Director, Division of Market Regulation, SEC.

[4] *See* Exchange Act Release No. 40858 (December 19, 1998) _____ FR _____ (January ____, 1998) (SR–NYSE–98–28).

[5] *See* Exchange Act Release No. 40109 (June 22, 1998) 63 FR 35299 (June 29, 1998).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange is requesting accelerated approval of the proposed rule change pursuant to Section 19(b)(2) to ensure that this rule becomes effective on January 1, 1999 in conjunction with the effectiveness of comparable rules of the NYSE, which was approved by the Commission on December 29, 1998). Other self-regulatory organizations (''SROs'') are adopting these rules or issuing interpretive releases to provide uniformity throughout the securities industry.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–BSE–98–14 and should be submitted by January 28, 1999.

V. Conclusion

The Exchange is requesting accelerated approval of the proposed rule change pursuant to Section 19(b)(2) to ensure that this rule becomes effective on January 1, 1999 in conjunction with the effectiveness of comparable NYSE rules. It is expected that in the near future other SROs will adopt similar rules or issue interpretive releases to provide uniformity throughout the securities industry. To prevent prospective plaintiffs from being disadvantaged by any inconsistency in the effective dates of SROs rule changes or interpretive releases, the Commission finds good cause for approving the proposal prior to the 30th day after the date of publication of notice of the filing in the **Federal Register**.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[6] that the proposal, SR–BSE–98–14, be and hereby is approved on an accelerated basis.[7]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–296 Filed 1–6–99; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78s(b)(2).

[7] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40856; File No. SR–BSE–98–12]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change, as Amended, by the Boston Stock Exchange, Inc. Relating to its Minor Rule Violation Plan.

December 29, 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 December 9, 1998, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On December 23, 1998, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change, as amended.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Karen A. Aluise, Vice President, BSE, to Ann Vlcek, Division of Market Regulation, Commission, dated December 23, 1998 (''Amendment No. 1''). In Amendment No. 1, the BSE clarified language regarding the Summary Fines for violation of the Post Rules.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to adopt written policies and procedures to address certain administrative issues related to the new trading floor (''Floor'')[4] in an effort to control access to secure areas and to give jurisdiction over posts to the Floor Facilities Committee (''Committee''). The text of the Exchange's proposal is available at the Exchange and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the BSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to add two trading floor rules in regard to post assignment and telecommunications room (''Comm Room'') access to the Exchange's Minor Rule Violation Plan's Summary Fine Schedule. This will enable the Exchange to address violations of these two rules, which are deemed minor in nature due to their administrative function, through the use of fines rather than a full disciplinary procedure.

The proposed Summary Fines regarding Post Rules provide that any post relocation or alteration of any post without the prior written consent of the Committee; refusal of a post location change by the Committee; use of an unassigned post for any purpose without the prior written consent of the Exchange; storage of materials in an unauthorized area of the Floor; and/or placing or installing any personal equipment (computers, file cabinets, chairs, bulletin boards, tables, shelves,

[4] The BSE is scheduled to move into its new trading floor on January 4, 1999.

desks, etc.) without the prior written authorization of the Exchange could result in a $250 fine for the initial offense and a $500 fine for subsequent offenses by the Exchange for any damage to a post and/or the removal of materials and/or equipment.

The proposed Summary Fines regarding Comm Room Rules provides that not obtaining a permit number from the Exchange prior to any installation or servicing of hardware or telecommunications equipment (i.e., voice and data); unauthorized vendor access to the Comm Room or the Trading Floor without prior notification to the Exchange and accompaniment by an authorized Exchange staff member or floor member; and/or unauthorized equipment removal from any Exchange location could result in a $250 fine for the initial offense and a $500 fine for subsequent offenses. It further provides that these fines are in addition to any costs incurred by the Exchange for any loss of, damage to and/or removal of equipment.

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[5] in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The BSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR–BSE–98–12 and should be submitted by January 28, 1999.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 of the Act.[6] Section 6(b)(5)[7] of the Act states that the rules of an exchange must be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating securities transactions. These rules also must help to remove impediments to and perfect the mechanism of a free and open market. The Commission believes the proposed Summary Fines regarding the Post Rules and Comm Rules are consistent with this provision of the Act in that they will enable the Exchange to appropriately address violations of these rules.

The Exchange's proposal is also consistent with the requirements in Sections 6(b)(1)[8] and 6(b)(6)[9] of the Act that the rules of an exchange enforce compliance with and provide appropriate discipline for violations of the Exchange's rules and the rules under the Act. Moreover, because BSE Chapter XVIII Section 4 provides procedural rights to the person fined, the proposal provides a fair procedure for the disciplining of members and persons associated with members, consistent with 6(b)(7)[10] and 6(d)(1)[11] of the Act.

Pursuant to Section 19(b)(2),[12] the Commission finds good cause for approving the proposed rule change, as amended, prior to the 30th day after the date of publication of notice thereof in the **Federal Register**.[13] The Commission notes that the Exchange moves to its new trading floor on January 4, 1999, and believes that accelerated approval of the proposed rule change will enable the Exchange to better enforce compliance with its Post Rules and Comm Rules without any unnecessary delay. In addition, the Commission notes that the proposed rule change is generally administrative in nature and, as such, does not raise any competitive or investor protection issues.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change, as amended, (SR–BSE–98–12) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–303 Filed 1–6–99; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f(b)(1).

[9] 15 U.S.C. 78f(b)(6).

[10] 15 U.S.C. 78f(b)(7).

[11] 15 U.S.C. 78f(d)(1).

[12] 15 U.S.C. 78s(b)(2).

[13] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40844; File No. SR–BSE–98–07]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to a Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to Its Specialist Performance Evaluation Program

December 28, 1998.

I. Introduction

On October 8, 1998, the Boston Stock Exchange, Inc. (''BSE'' Or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the depth measure calculations in its Specialist Performance Evaluation Program (''SPEP'') pilot program and to seek permanent approval of the program at the expiration of the pilot on December 31, 1998. The Exchange submitted to the Commission

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Amendment No. 1 to its proposed rule change on November 13, 1998.[3]

The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on December 11, 1998.[4] On December 17, 1998, the BSE submitted Amendment No. 2 to the proposed rule change.[5] This order approves Amendment No. 2, which extends the SPEP pilot for a six-month period ending on June 30, 1999, or until the Commission approves the proposal seeking to amend the program and to make the program permanent, whichever occurs first.

Background

The Exchange regularly evaluates the performance of its specialists under the SPEP pilot program. Under the SPEP pilot, specialists are evaluated based on objective measures, such as turnaround time, price improvements, depth and added depth. Generally, any specialist who receives a deficient score in one or more objective measures may be required to attend a meeting with the Performance Improvement Action Committee or the Market Performance Committee.

The Exchange has submitted a proposal seeking to amend its SPEP pilot by modifying the two depth measure calculations and the overall program score. In addition, the Exchange is requesting permanent approval of the program, which is set to expire on December 31, 1998. The Commission is currently in the process of reviewing the Exchange's proposal seeking to amend and permanently approve the SPEP pilot.

II. Description

In the current amendment, the Exchange is proposing to extend the SPEP pilot for a six-month period ending on June 30, 1999, or until the Commission approves the proposal seeking to amend the program and have it approved permanently, whichever occurs first. The proposed rule language, as amended, follows. Deletions are bracketed.

Chapter XV

Specialists

Specialist Performance Valuation Program

* * * * *

Sec. 17(a) [The Specialist Performance Evaluation Program is a 12-month pilot program.]

III. Discussion

The Commission finds that the BSE's proposal to extend the SPEP pilot program until June 30, 1999, or until the Commission approves the proposal seeking to amend the program and to make the program permanent, whichever occurs first, is consistent with the requirements of the Act and the rules and regulation thereunder. Specifically, the Commission finds that the amendment is consistent with Section 6(b)(5) of the Act,[6] which requires that the rules of the Exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Commission believes that the proposed six-month extension of the pilot program should continue to provide necessary oversight of Exchange specialist while allowing the Commission adequate time to consider the BSE's proposal seeking to amend its two depth measure calculations and to make its program permanent.

The Commission finds good cause for granting the Exchanges' request for a six-month extension of the SPEP pilot prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.** Among the obligations imposed upon specialists by the Exchange, and by the Act and the rules promulgated thereunder, is the maintenance of fair and orderly markets in their securities. To ensure that specialists fulfill these obligations, it is important that the Exchange conduct effective oversight of their performance. The BSE's SPEP pilot is critical to this oversight. Therefore, the Commission believes good cause exists to approve the extension of the pilot program until June 30, 1999, or until the Commission approves the Exchange's proposal seeking to amend its two depth measure calculation and to make its program permanent, on an accelerated basis. Accordingly, the Commission believes that granting accelerated approval of the requested extension is appropriate and consistent with Sections 6(b)(5) and 19(b)(2) of the Act.[7]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filings will also be available for inspection and copying at the principal offices of the Exchanges. All submissions should refer to File No. SR–BSE–98–07 and should be submitted by January 28, 1999.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that Amendment No. 2 to the proposed rule change, SR–BSE–98–07, which extends the SPEP pilot until June 30, 1999, or until the Commission approves the proposal seeking to amend the program and to make the program permanent, whichever occurs first, is approved.[9]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–308 Filed 1–6–99; 8:45 am]

BILLING CODE 8010–01–M

[3] *See* Rule 19b–4 filing, SR–BSE–98–07, dated November 6, 1998 (''Amendment No. 1'').

[4] Securities Exchange Act Release No. 40746 (Dec. 3, 1998), 63 FR 68490 (Dec. 11, 1998).

[5] In Amendment No. 2, the Exchange (1) requested an extension of the SPEP program for a six-month period ending on June 30, 1999, or until the Commission approves the Exchange's proposal to revise the SPEP and to make it permanent,whichever occurs first, and (2) made a technical change to its rule.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[8] 15 U.S.C. 78s(b)(2).

[9] In approving Amendment No. 2, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 17 CFR 200.303(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40857; File No. SR–CHX–98–28]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to the Filing of Certain Material by Listed Companies in the EDGAR System

December 29, 1998.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on November 25, 1998, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CHX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add Interpretation and Policy .01 to Exchange Rule 19 of Article XXVIII and Interpretation and Policy .04 to Exchange Rule 21 of Article XXVIII to permit listed companies to comply with their obligation to file certain reports and other materials with the Exchange by filing such material with the Commission through the Electronic Data Gathering, Analysis, and Retrieval (''EDGAR'') System.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

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 streamline filing requirements for listed companies by permitting them to satisfy the requirement of filing certain CHX and Commission documents with the Exchange by filing such documents with the Commission in electronic format.

The Exchange's rules require listed companies to file with the Exchange copies of annual and certain interim reports, as well as certain other filings required by the Commission, such as registration statements and prospectuses, depending on whether the company is listed pursuant to Tier I or Tier II of the Exchange's listing rules. The Commission also requires listed companies to file copies of reports and registration statements required by the Commission with any national securities exchange on which their securities are listed. Listed companies currently file these materials with the Exchange in paper format, even if they file electronically with the Commission. Under the Commission's regulations, domestic registrants generally are required to file all material with the Commission through EDGAR.[2]

The proposed rule change provides that, with one exception, the EDGAR filing will satisfy the Exchange filing requirement.[3] The Exchange will have immediate and complete access to all filings through a contractual relationship with a commercial vendor which provides real-time access to the EDGAR system.[4] The relevant Exchange staff also has access to much of this information through the Commission's EDGAR site on the World Wide Web.

The Exchange will continue to require hard copy filings for material necessary to support a listing application. The Exchange currently accepts listing applications only in hard copy format. The Exchange will continue to require the exhibits and attachments to listing applications, including registration material filed with the Commission, to be filed in hard copy form. The proposed rule change does not affect companies, if any such companies exist, that do not use EDGAR and instead continue to file paper reports with the Commission.

2. Statutory Basis

The proposed rule change is consistent with section 6(b)(5) of the Act[5] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons regulating securities transactions, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A)(i) of the Act,[6] and subparagraph (e) of Rule 19b–4 thereunder.[7] The Exchange will not implement the proposed rule change until the Commission staff concurs with the relief requested in the No-Action Letter, *i.e.*, that a company's filing of a report or other material covered by this rule change through EDGAR will satisfy the company's obligation under the

[2] 17 CFR 232.100.

[3] Simultaneous with this filing, the Exchange submitted a request for a no-action letter (the ''No-Action Letter''), on its own behalf, and behalf of its listed companies, seeking Commission staff concurrence in the view that a company's filing of a report or other material covered by this rule change through EDGAR will satisfy the company's obligation under the Commission's rules to file the material with the Exchange, and that the Exchange's receipt and retention of such document through EDGAR will satisfy the Exchange's obligations under Rule 17a–1 under the Act. Although the proposed rule change is effective upon filing, the Exchange will not implement the rule change until the Commission staff concurs with the relief requested in the No-Action Letter.

[4] The Exchange represents that it has obtained real-time access to all filings made by Exchange-listed companies through a ''Level 1'' subscription with a commercial vendor. Telephone conversation between Patricia Levy, General Counsel, CHX, Karl Varner, Special Counsel, Division of Market Regulation, Commission and Sonia Patton, Attorney, Division of Market Regulation, Commission, on December 14, 1998.

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A)(i).

[7] 17 CFR 240.19b–4

Commission's rules to file the material with the Exchange and that retention of such information in the EDGAR system will satisfy the Exchange's record retention requirements under Rule 17a–1 under the Act. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[8]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 522, will be available for inspection and copying at the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–CHX–98–28 and should be submitted by January 28, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–304 Filed 1–6–99; 8:45 am]

BILLING CODE 8010–01–M

[8] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40838; File No. SR–CBOE–98–40]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by Chicago Board Options Exchange, Incorporated, Relating to Mandatory Year 2000 Testing

December 28, 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 September 22, 1998, as amended on December 24, 1998,[3] the Chicago Board Options Exchange, Incorporated (''CBOE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the CBOE. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to approve the proposal and Amendment No. 1 thereto on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to adopt new Rule 15.11, *Mandatory Year 2000 Testing,* that would require member firms to participate in computer system testing designed to prepare for the Year 2000 and to file reports with CBOE regarding Year 2000 testing.

The test of the proposed rule change is below. Proposed new language is italicized.

* * * * *

Chapter XV

* * * * *

Records, Reports and Audits

* * * * *

Mandatory Year 2000 Testing

Rule 15.11

[This rule will expire automatically on January 1, 2001.]

(a) Point-to-Point Testing. Each member that has an electronic interface with the Exchange shall participate in point-to-point testing with the Exchange of its computer systems designed to ascertain Year 2000 compatibility of those computer systems, in a manner and frequency as prescribed by the Exchange. A member that has its electronic interface through a service provider need not participate in point-to-point testing if, by a time designated by the Exchange, (i) the service provider conducts successful tests with the Exchange on behalf of the firms it serves, (ii) the member conducts successful point-to-point testing with the service provider and (iii) the Exchange agrees that further testing is not necessary.

(b) Industry Wide Testing. The Exchange may require certain of its members to participate in industry wide testing of computer systems for Year 2000 compatibility. The Exchange may require any member who will participate in industry wide testing to also participate in any tests necessary to ensure preparedness to participate in industry wide testing.

(c) Reports. Members participating in point-to-point testing (whether between the firm and the Exchange, between the firm and its service provider, or between the firm's service provider and the Exchange) or industry wide testing shall file reports with the Exchange concerning the required tests in the manner and frequency required by the Exchange. The Exchange may require reports before the testing is begun to ensure that the member or its service provider is prepared to participate in the tests.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

On January 1, 2000, the internal date in computers throughout the world will

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Timothy Thompson, Director-Regulatory Affairs, Legal Department, CBOE, to Michael Walinskas, Deputy Associate Director, Division of Market Regulation, Commission, dated December 22, 1998 (''Amendment No. 1''). The original filing was not noticed in the **Federal Register**.

change from ''12/31/99'' to ''01/01/00.'' Absent the necessary changes to those computers' codes, then those computers could make errors in even the most routine processing, because the computers may read the two digit ''00'' year code as 1900 instead of as 2000. This ''Year 2000'' problem could have disastrous consequences for a number of businesses, including the securities industry, if businesses do not make the necessary changes and perform the necessary testing prior to the Year 2000. The constituents of the securities industry will need to coordinate extensive testing to ensure there are no widespread problems.

The CBOE, in cooperation with the SEC and with other self regulatory organizations (''SROs''), has been working to raise awareness of the Year 2000 problem in the industry. The proposed CBOE Rule 15.11(a) would require each CBOE member that has an electronic interface with CBOE to participate in point-to-point testing with the Exchange of computer systems, in a manner and frequency prescribed by the Exchange.[4] Generally, point-to-point testing means testing between two entities. In this case, the requirement refers to testing between the member with the electronic interface and the Exchange.

A member can be exempted from this requirement if the member has its electronic interface through a service provider is, by a time designated by the Exchange, the service provider conducts successful tests with the Exchange on behalf of the firms its serves, if the member conducts successful point-to-point testing with the service provider by a time designated by the Exchange, and if the Exchange agrees that no further testing is necessary.

CBOE understands that other SROs, including NASD Regulation, the New York Stock Exchange, and the American Stock Exchange are also proposing rules to require mandatory Year 2000 testing by their members.

To ensure that the securities industry is adequately prepared to meet the ''Year 2000'' problem, the Securities Industry Association (''SIA'') has undertaken to coordinate industry-wide testing. Participants will include, among others the stock exchanges, Nasdaq, registered clearing corporations, data processors and broker-dealers. The first industry-wide test is scheduled for March 6, 1999. The proposed CBOE Rule 15.11(b) specifically authorizes CBOE to require certain CBOE members to participate in those industry-wide tests.[5]

Proposed CBOE Rule 15.11(c) would also require members participating in point-to-point and/or industry testing to file reports with CBOE concerning the required tests in the manner and frequency required by the Exchange. The Exchange may require reports of its members participating in either the point-to-point testing (whether between the firm and the Exchange, between the firm and its service provider, or between the firm's service provider and the Exchange) or the industry wide testing. Moreover, the Exchange may require reports before the testing is begun to ensure that the member or its service provider is prepared to participate in the tests.

A member that is subject to the rules and fails to participate in the tests or fails to file any required reports, may be subject to disciplinary action pursuant to Chapter XVII of the Exchange's rules.

(2) Basis

The Exchange believes that, by helping to ensure the participation of Exchange members in important testing to prepare for Year 2000, the proposed rule change is consistent with section 6(b) of the Act[6] in general, and in particular will further the objectives of section 6(b)(5),[7] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission has concluded, for the reasons set forth below, that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder. Mandating Year 2000 testing and reporting is consistent with section 6(b)(5) of the Act, which, among other aspects, requires that the rules of an exchange promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and a national market system. The Commission believes that the proposed rule change will facilitate CBOE's and member firms' efforts to ensure the securities markets' continued smooth operation during the period leading up to and beyond January 1, 2000.

The Exchange has requested that the Commission approve the proposed rule change prior to the 30th day after the date of publication of notice of the filing in the **Federal Register** because, in light of the industry wide tests that will soon begin and the tests that the Exchange is conducting, the Exchange wants to ensure that it can promptly deal with any problems that arise. The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of the filing in the **Federal Register**. It is vital that SROs

[4] It should be noted that the Exchange believes that it currently has the authority wihtout the approval of this Rule to require testing and reporting with respect to Year 2000 under its broad authority to enforce the provisions of the Exchange Act and to ensure the safety of its marketplace. More specifically, Rule 4.2 prohibits members from engaging in conduct that violates the Exchange Act; Rule 4.3 permits the Exchange to approve the maintenance of wire connections with other members or with non-members; and Rule 4.10 gives the President or the Chairman of the Exchange the right to impose such conditions and restrictions on a member as either may consider reasonably necessary for the protection of the Exchange and the customers of such member. Because a Year 2000 problem with a member's computers could have such serious impact on the Exchange or the conduct of customer business, the Exchange believes it could rely on these rules to require all the testing and reporting required by proposed Rule 15.11 or to prohibit any wire connections involving computers for non-compliance of the Exchange's requests. The Exchange believes, however, that its membership is better served by having the specifics of its intention with respect to Year 2000 testing and reporting defined in a separate rule.

[5] The Exchange will encourage its members to participate in industry wide testing to the extent those firms can be accommodated into the testing schedule. The Exchange also makes clear in the Rule that it may require its members to participate in the industry wide testing. The Exchange would exercise this authority in the event it was deemed important for those members to participate and to the extent those firms chose not to participate voluntarily.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

such as CBOE have the authority to mandate that their member firms participate in Year 2000 testing and that they report test results (and other Year 2000 information) to the SROs. The proposed rule change will help CBOE participate in coordinating Year 2000 testing, including industry-wide testing, and in remediating any potential Year 2000 problems. This, in turn, will help ensure that the industry-wide tests and CBOE's Year 2000 efforts are successful. The proposed rule change will also help CBOE work with its member firms, the SIA, and other SROs to minimize any possible disruptions the Year 2000 may cause.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR–CBOE–98–40 and should be submitted by January 28, 1999.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act[8] that the proposed rule change (SR–CBOE–98–40) and Amendment No. 1 thereto is thereby approved On an accelerated basis.[9]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–305 Filed 1–6–99; 8:45 am]

BILLING CODE 8010–01–M

[8] 15 U.S.C. 78s(b)(2).

[9] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40839; File No. SR–CHX–92–32]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Mandatory Year 2000 Testing

December 28, 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 December 21, 1998, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add a new rule, Article XI, Rule 11, to require certain CHX members to conduct or participate in computer tests designed to address the Year 2000 problem and to file reports with the CHX.

The text of the proposed rule change is below. Proposed new language is italicized.

* * * * *

ARTICLE XI

Rule 11. Mandatory Year 2000 Testing

[Note: This rule will expire automatically on January 1, 2001]

(a) *Each member and member organization shall conduct or participate in testing of computer systems designed to prepare for Year 2000, in a manner and frequency prescribed by the Exchange, and shall provide to the Exchange reports related to such testing as requested by the Exchange.*

(b) *The Exchange may exempt a member or member organization from this requirement if that member or member organization cannot be accommodated in the schedule by the organization conducting the test or if the member does not employ computers in its business or for other reasons acceptable to the Exchange.*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.194b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CHX is proposing to adopt a rule that would establish the CHX's specific authority to require certain members to participate in Year 2000 tests and to require reporting on the tests.[3] The CHX is proposing that the rule will expire in the year 2001 so that the CHX will have specific authority to mandate testing and reporting, as necessary, to correct problems that are not resolved prior to January 1, 2000, or to correct problems that arise after January 1, 2000.

On January 1, 2000, the internal date in computers should roll-over from ''12/31/99'' to ''01/01/00.'' At that moment, if corrective measures have not been taken, the program logic in the vast majority of these computer systems will begin to produce erroneous results because the systems will read the date as beginning in the year 1900 rather than 2000. This problem, known as the ''Year 2000 Problem,'' could cause significant disruption in the securities industry. There are several stages involved in correcting the Year 2000 Problem, including: assessing the problem; implementing corrective measures; conducting internal, point-to-point, and integrated or industry-wide testing; and establishing contingency plans.

The testing stage of correcting the Year 2000 Problem will be critical to

[3] The proposed rule is not intended to limit the CHX's existing authority by rule, contract, or otherwise, to mandate testing or require reports from members.

ensuring that the markets will operate with minimal disruption after January 1, 2000. To facilitate testing on an integrated, industry-wide basis, the Securities Industry Association (''SIA'') has undertaken the task of coordinating such a test. Test participants will include, among others, Nasdaq, the exchanges, registered clearing corporations and depositories, data processors, and broker-dealers. The first day of the integrated, industry-wide test is scheduled for March 6, 1999.[4]

The CHX believes it is essential that the firms that could cause the most disruption in the market (if these firms have not corrected the Year 2000 Problem) conduct tests of all of their critical computer systems that relate to their different types of businesses (*e.g.*, equities, options, government securities, mortgage-backed securities). Consequently, the CHX is proposing to require certain firms to conduct tests to address the Year 2000 Problem in a manner and frequency prescribed by the Exchange.

The proposed rule would provide specific authority to require participation in organized, industry-sponsored tests, and require ''point-to-point'' testing between member firms and the CHX or other systems, or internal tests of members systems. These other tests may be particularly significant for smaller forms that may not be able to participate in the industry-sponsored tests.

Some members may be able to satisfy their testing obligation without actually conducting tests themselves. For example, it is likely that specialists that are not clearing firms and that only use CHX issued specialist terminals for their specialist activity will not be required to participate in mandatory testing because the CHX has completed testing of this system. Also, members that use computer systems provided by service bureaus are not likely to have to perform any additional tests of the systems provided by the service bureaus so long as (i) the service bureaus participate in the SIA coordinated test, (ii) the members have on cured point-to-point testing with their service bureaus, (iii) the service bureaus have conducted point-to-point testing with the CHX, and (iv) the tests do not indicate any problems.

The CHX also believes that test results should be reported to the CHX. These reports will enable the CHX to identify those members that have not adequately prepared for the Year 2000 so that appropriate action can be taken to address these members' deficiencies, including, for example, providing assistance to or easing the transition of business to other firms. Accordingly, the proposal would require members to file reports with the CHX about the tests. To avoid duplicative and burdensome reporting, the CHX will coordinate its reporting requirements with other SROs as much as possible. For example, the CHX may exclude from its reporting requirement those firms for which the CHX is not the designated examining authority.

The CHX will issue Notices to Members specifying members' reporting and testing obligations sufficiently in advance of specific events, such as SIA-coordinated industry-wide tests, that members will reasonably be able to comply. Regardless of when such Notices are issued, nothing in this rule relieves member firms of their obligations to take all necessary steps so that they may function properly—both their internal systems and their ability to communicate and transact business with other firms—on and after January 1, 2000.

Further, although the CHX is not proposing to require all members of the CHX to conduct external testing, testing is a key element of year 2000 compliance for all firms.[5] Specifically, the CHX still encourages all member firms to test their computer systems and take whatever remedial measures are necessary to deal with Year 2000 issues.

2. Statutory Basis

The exchange believes that the proposed rule change is consistent with section 6(b)(5) of the Act,[6] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and in, in general, to protect investors and the public interest. The CHX rule requiring certain members to conduct or participate in Year 2000 tests, and to file reports about the tests, will enable CHX, those participating in the tests, and others to evaluate the readiness of securities industry for the Year 2000. The firms that would be required to conduct testing perform critical functions in the markets and these firms' inability to perform these functions beyond January 1, 2000 could cause disruptions in the markets and cause harm to investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange goes not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission has concluded, for the reasons set forth below, that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder. Mandating Year 2000 testing and reporting is consistent with section 6(b)(5) of the Act, which, among other aspects, requires that the rules of an exchange promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and a national market system. The Commission believes that the proposed rule change will facilitate the CHX's and member firms' efforts to ensure the securities markets' continued smooth operation during the period leading up to and beyond January 1, 2000.

The Exchange has requested that the Commission approve the rule change prior to the thirtieth day after publication of the proposal in the **Federal Register**, to help ensure that CHX member firms are properly prepared for the SIA industry-wide testing that is scheduled to begin on March 6, 1999. The Commission finds good cause for approving the proposed rule prior to the 30th day after the date of publication of notice of the filing in the **Federal Register**. It is vital that SROs such as CHX have the authority to mandate that their member firms participate in Year 2000 testing and that they report test results (and other Year

[4] The exact number of firms that will be able to participate in the SIA test has not been conclusively determined.

[5] Member firms that choose or are required to participate in external testing should recognize that internal testing is a prerequisite for external testing and participation in SIA-coordinated tests and should act accordingly.

[6] 15 U.S.C. 78f(b)(5).

2000 information) to their SROs. The proposed rule change will help the CHX participate in coordinating Year 2000 testing, including industry-wide testing, and in remediating any potential Year 2000 problems. This, in turn, will help ensure that the industry-wide tests and the CHX's Year 2000 efforts are successful. The proposed rule change will also help the CHX work with its member firms, the SIA, and other SROs to minimize any possible disruptions the Year 2000 may cause.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–98–32 and should be submitted by January 28, 1999.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act [7] that the proposed rule change is hereby approved on an accelerated basis.[8]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–306 Filed 1–6–99; 8:45 am]

BILLING CODE 8010–01–M

[7] 15 U.S.C. 78s(b)(2).

[8] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition and capital formationl. 15 U.S.C. 78c(f).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40843; File No. SR–CSE–98–04]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the Cincinnati Stock Exchange, Inc. to Reduce the Exchange's Public Agency Guarantee Size

December 28, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 26, 1998, the Cincinnati Stock Exchange, Inc. (''CSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On November 13, 1998, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange hereby proposes to amend the public agency guarantee in CSE Rules 11.9(c)(v) and (n) to reflect recent changes in market conditions. Below is the text of the proposed rule change. Additions are italicized; deletions are in brackets.

Rule 11.9. National Securities Trading System

(a) through (b) No Change.

(c)(i) through (c)(iv) No Change.

(c)(v) Guarantee the execution up to [2099] *1099* shares at the opening price of opening public agency market orders and limit orders which are priced better than such opening price. If there exist two or more Designated Dealers in a Designated Issue, then, unless the Securities Committee has approved one member as the primary Designated Dealer in that issue, the guarantee obligation shall rotate among such Designated Dealers on a daily basis.

(d) through (m) No Change.

(n) Public Agency Guarantee

(1) Public agency opening market orders and limit orders better than the opening price which are entered prior to the opening up to [2099] *1099* shares shall be executed at the opening price.

(2) through (3) No Change.

(4) Subject to the requirements of the short sale rule, orders must be filled on the basis of the ITS BBO bid on a sell order or the ITS BBO offer on a buy order. Sell orders will be satisfied up to the size of the lesser of the ITS BBO bid or [2099] *1099* shares; buy orders up to the lesser of the ITS BBO offer or [2099] *1099* shares. No portion of an order larger than [2099] *1099* shares is subject to the public agency guarantee.

(5) through (6) No Change.

(o) through (v) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis, for, the Proposed Rule Change

In its filing with the Commission, the CSE 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 defined in Item IV below. The CSE 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

Exchange Rules 11.9(c)(v) and (n) provide an execution guarantee for public agency market and marketable limit orders. Because the Exchange employs a multiple competing specialist system, this execution obligation rotates among the specialists in a particular issue. The specialist upon whom the public agency obligation falls is called the Designated Dealer of the day.[4] Currently, the Designated Dealer of the day is required to satisfy public agency orders up to the size of the lesser of the national best bid (for a sell order) or offer (for a buy order) (''NBBO'') or 2099 shares. No portion of an order larger than 2099 shares is subject to the guarantee.

The Exchange proposes to lower the maximum order size of its public agency

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Adam W. Gurwitz, Vice President Legal and Corporate Secretary, CSE, to David Sieradzki, Staff Attorney, SEC, dated November 12, 1998. (''Amendment No. 1''). In Amendment No. 1, CSE proposed to change Rule 11.9 (c)(v) to reduce the execution guarantee at the opening price of public agency market orders and limit orders. Additionally, CSE requested that Section 8 of its rule filing be amended to reference the relevant rules regarding the public order guarantee levels of the Philadelphia Stock Exhcange, Inc., the Boston Stock Exchange, Inc., and the Pacific Exchange, Inc.

[4] *See* CSE Rules 11.9(a)(3) and 11.9(c)(iv).

guarantee in light of recent changes in market conditions. The National Market System generally began quoting and trading securities in increments smaller than ⅛ of $1.00 starting in the spring of 1997.[5] The move to ⅟₁₆ths and record volume levels conceivably could be accentuating rapid price changes and market movements. In response to this changed environment, the proposed rule change would lower the size of the public agency guarantee to the lesser of the NBBO or 1099 shares. The public agency guarantee would otherwise remain unchanged. The Exchange notes that this new level would bring the CSE's public agency guarantee more in line with the guarantees of other exchanges[6] and believes the proposed rule change will restore a balance between the exposure its specialists face in a more volatile trading environment and the need to provide the best possible execution for public investors.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(5) in particular in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the proposed rule change will balance the risks incurred by the Exchange's specialists in a more volatile trading environment with the need to ensure proper execution of public agency orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CSE. All submissions should refer to File No. SR–CSE–98–04 and should be submitted by January 28, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–301 Filed 1–6–99; 8:45 am]

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[5] *See e.g.*, Securities Exchange Act Release No. 38678 (May 27, 1998), 62 FR 30363 (June 3, 1997) (Order granting approval to proposed rule change to decrease the minimum quotation increment for certain securities listed and traded on the Nasdaq Stock Market to ⅟₁₆th of $1.00).

[6] The Pacific Exchange (''PCX'') guarantees execution of agency market orders up to 1099 shares for automatic execution both prior to the opening at the primary market opening price and during daily trading at the P/COAST quote (best bid and ask available through ITS) or better. Telephone conversation between Robert P. Pacileo, Staff Attorney, Regulatory Policy, PCX, and John Roeser, Attorney, Division of Market Regulation, SEC on Nov. 10, 1998. *See also* PCX Rules 5.25(a) and 5.25(c). Pursuant to Philadelphia Stock Exchange (''Phlx'') Rule 229.06, agency market orders up to 1099 shares entered prior to the opening will be executed at the New York market opening price. Agency market and limit orders up to 1099 shares (or such greater size as the specialist agrees to accept) entered prior to and after the opening will either be executed in accordance with the Professional Execution Standards in Rule 229.10(b) or automatically executed in accordance with the procedures set forth in Rule 229.05. *See* Phlx Rules 229.05, 229.06, and 229.10. The Boston Stock Exchange (''BSE'') guarantees execution on agency market and marketable limit orders entered prior to and after the opening up to 1299 shares. *See* BSE Rules Chapter II § 33(a) and § 33.01.

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 40592A; File No. SR–NASD–98–77]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Central Registration Depository Fees; Correction

December 29, 1998.

In FR Document 98–28849, beginning on page 57718, for Wednesday, October 28, 1998, several sections of the proposed rule were incorrectly stated. The following sections of Item I on page 57718 should read as follows:

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

* * * * *

Section 2–Fees

* * * * *

(b) [Each member shall be assessed a fee of $85.00 for each application filed with the Association for registration of a registered representative or registered principal. Additionally, each member shall be assessed a surcharge of $95.00 for registrations involving a special registration review filed with the Association.]

The NASD shall assess each member a fee of:

(1) $85.00 for each initial Form U–4 filed by the member with the NASD for the registration of a representative or principal, except that [The] *the* following *discounts* shall apply to the filing of [applications] *Forms U–4* to [re-register or] transfer the registration of [registered persons] *represenatives* or [registered] principals in connection with acquisition of all or a part of a member's business by another member:

* * * * *

(2) $40.00 for each initial Form U–5 filed by the member with the NASD for the termination of a registered representative or registered principal, plus a late filing fee of $80.00 if the member fails to file the initial Form U–5 within 30 days after the date of termination;

(3) $20.00 for each amended Form U–4 or Form U–5 filed by the member with the NASD;

(4) $95.00 for additional processing of each initial or amended Form U–4 or Form U–5 that includes the initial reporting, amendment, or certification of one or more disclosure events or proceedings;

(5) $10.00 for each fingerprint card submitted by the member to the NASD, plus any other charge that may be imposed by the United States Department of Justice for processing such fingerprint card; and

* * * * *

(h)[(i) Each member shall be assessed a fee of $40.00 for each notice of termination of a registered representative or registered principal filed with the Corporation as required by Section 3 of Article IV of the By-Laws.

(ii) A late filing fee of $65.00 shall be assessed a member who fails to file with the Corporation written notice of termination of a registered representative or registered principal within thirty (30) calendar days of such termination.

(iii)] In the event a member believes it should not be required to pay the late filing fee, it shall be entitled to a hearing in accordance with the procedures set forth in the Rule 9640 Series.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–297 Filed 1–6–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40864; File No. SR–NASD–98–90]

Self-Regulatory Organizations; Order Granting Accelerated Approval to Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Proposed Amendments to the Code of Procedure to Provide for the Office of Disciplinary Affairs of NASD Regulation, Inc. to Authorize all Enforcement Actions

December 30, 1998.

I. Introduction

On December 4, 1998, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder.[2] In its proposal, NASD Regulation seeks to amend the rules of the Association to permit the Office of Disciplinary Affairs to authorize enforcement actions. Notice of the proposal was published in the **Federal Register** on December 14, 1998 (''Notice'').[3] The Commission received no comment letters on the filing. This order approves the proposal.

II. Description of the Proposal

The Association proposes centralizing review and authorization of all disciplinary actions within a single department, the Office of Disciplinary Affairs of NASD Regulation. Currently, the Case Authorization Unit (''CAU''), located in the Department of Enforcement of NASD Regulation, authorizes all disciplinary actions. Review of these cases, however, can take place in a separate office. Known as the Office of Disciplinary Policy (''ODP''), this office is the primary reviewer of cases developed in the Washington, DC, office and cases involving ''quality-of-market'' issues. The ODP, which reports to the Office of the President of NASD Regulation, also reviews and comments on all cases involving policy issues.

Because of the overlap between the CAU and the ODP, the Association wishes to consolidate their functions in a single place—the Office of Disciplinary Affairs (''ODA''). Under the proposed rule change, as approved hereby, all cases would be authorized by the ODA. Both the ODP and the CAU will cease to function following approval of these changes. According to NASD Regulation, the change will increase overall operating efficiency and maintain the consistency and independence of the case authorization function.

III. Discussion

As discussed below, the Commission has determined to approve the Association's proposal centralizing the authorization of all enforcement actions within the ODA. The standard by which the Commission must evaluate a proposed rule change is set forth in Section 19(b) of the Act. the Commission must approve a proposed NASD rule change if it finds that the proposal is consistent with the requirements of Section 15A of the Act[4] and the rules and regulations thereunder that govern the NASD.[5] In evaluating a given proposal, the Commission examines the record before it and all relevant factors and necessary information. In addition, Section 15A of the Act establishes specific standards for NASD rules against which the Commission must measure the proposal.[6]

Specifically, the Commission finds that the proposed rule change is consistent with Sections 15A(b)(7) and (8) of the Act, which require that the rules of the Association provide a fair procedure for the disciplining of members and associated persons. According to NASD Regulation, centralizing the authorization of disciplinary actions within the ODA will help maintain the consistency of the case authorization process. The Commission agrees that consistency in the authorizing of disciplinary actions contributes to maintaining fair procedures for the disciplining of members.

Additionally, NASD Regulation asserts that the proposed rule change will help maintain the independence of the case authorization function. Under the current rules, disciplinary actions were authorized by the CAU, which is located within the Department of Enforcement of NASD Regulation. Under the proposed rule, the ODA, which will authorize all enforcement actions, will report directly to Office of the President of NASD Regulation; thus separating it from the Department of Enforcement, who is a party to the proceeding. The Commission agrees that independence in the authorizing of disciplinary actions also contributes to maintaining fair procedures for the disciplining of members.

NASD Regulation requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act to approve the proposed rule change prior to the 30th day after its publication in the **Federal Register**. According to the NASD, accelerated approval is necessary to facilitate the orderly transfer of functions to the ODA, which will start operating on January 1, 1999. The Commission finds that this is an appropriate reason for accelerating approval, and notes this approval follows a notice and comment period of fifteen days that expired without receipt of comment.

IV. Conclusion

The Commission believes that the proposed rule change is consistent with the Act, and, particularly, with Section 15A thereof.[7] In approving the

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 40755 (December 7, 1998), 63 FR 68814 (December 14, 1998) (File No. SR–NASD–98–90)

[4] 15 U.S.C. 78*o*–3.

[5] U.S.C. 78s(b).

[6] 15 U.S.C. 78*o*–3.

[7] 15 U.S.C. 78*o*–3.

proposed, the Commission has considered its impact on efficiency, competition, and capital formation.[8]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–NASD–98–90) relating to proposed amendments to the Rules of the Association to permit the Office of Disciplinary Affairs of NASD Regulation to authorize all enforcement actions, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–298 Filed 1–6–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40858; File No. SR–NYSE–98–28]

Self Regulatory Organizations; Order Approving Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Arbitration Rules

December 29, 1998.

I. Introduction

On September 15, 1998, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder.[2] The proposed rule change would amend NYSE Rules 347 and 600 to exclude claims of employment discrimination, including sexual harassment, in violation of a statute from arbitration unless the parties have agreed to arbitrate the claim after it has arisen. Notice of the proposed rule change, together with the substance of the proposal, was provided in a Commission release and in the **Federal Register**.[3] The Commission received three comment letters and a response to those letters from the Exchange. The Commission is approving the proposed rule change.

II. Description

The proposed rule change will modify the current requirement in NYSE Rule 347 that any employment-related disputes between a registered representative and a member or member organization be settled by arbitration. The proposal provides that statutory employment discrimination claims are eligible for arbitration at the Exchange only if the parties agree to arbitrate the claims after they arise.

Background

NYSE Rule 347 has been in effect since the late 1950's and requires that any employment-related disputes between a registered representative and a member or member organization be settled by arbitration.[4] In order to become ''registered'' an individual is required to sign and file with the Exchange a Form U–4 (Uniform Application for Securities Registration or Transfer). Form U–4 requires registered persons to submit to arbitration any claim that must be arbitrated under the rules of the self-regulatory organizations (''SROs'') with which they register.

Until the 1990's, the rule was generally invoked to arbitrate business and contract disputes, such as wrongful discharge, breach of contract or claims regarding compensation. In 1991, the Supreme Court held in *Gilmer* v. *Interstate/Johnson Lane*,[5] that a registered representative could be compelled to arbitrate his claim under the Age Discrimantion in Employment Act (''ADEA'') pursuant to Form U–4 and NYSE Rule 347. Subsequent courts have held that claims alleging employment discrimation, including sexual harassment claims, may be compelled to arbitration.[6]

In 1994, the General Accounting Office (''GAO'') conducted a study on the arbitration of employment discrimination disputes in the securities industry.[7] The GAO Report did not critize the fairness of arbitration as a means of resolving employment discrimination disputes, but did make recommendations for improving the arbitration process. Despite steps to improve the process, registered representatives and others continue to oppose arbitration of discrimination claims pursuant to the Form U–4 and other pre-dispute agreements. In July 1997, the U.S. Equal Employment Opportunity Commission (''EEOC'') issued a policy statement that mandatory pre-dispute agreements to arbitrate statutory employment discrimination claims are consistent with the purpose of the federal civil rights laws.[8]

In support of the EEOC's position, the Ninth Circuit Court of Appeals held in May 1998, in *Duffield* v. *Robertson Stephens & Company*,[9] that employers could not compel employees to waive their right to a judicial forum under Title VII, and therefore plaintiff could not be compelled to arbitrate her statutory employment discrimination claims pursuant to Form U–4.[10] Other federal courts consistently upheld the arbitration of employment discrimination claims pursuant to the Form U–4.

On June 22, 1998, the Commission approved a proposed rule change by the National Association of Securities Dealers, Inc. (''NASD'') to remove the requirement from its rules that registered representatives must arbitrate statutory employment discrimination claims.[11] Under the NASD's rule, an employee could file such a claim in court unless he or she was obligated to arbitrate pursuant to a separate agreement entered into either before or after the dispute arose.

The Commission's order approving the NASD rule change noted that the NASD intends to make changes to its arbitration program to make arbitration more attractive to parties for the resolution of discrimination claims.[12] An NASD ''Working Group'' that includes attorneys who represent employees, member firms and neutrals

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[8] 15 U.S.C. 78(c)f.

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 40479 (September 24, 1998) 63 FR 52782 (October 1, 1998).

[4] NYSE Rule 347 provides ''Any controversy between a registered representative and any member or member organization arising out of the employment or termination of employment of such registered representative by and with such member or member organization shall be settled by arbitration, at the instance of any such party, in accordance with the arbitration procedure prescribed elsewhere in these rules.''

[5] 500 U.S. 20 (1991).

[6] Indeed, they have extended the reasoning of Gilmer to cover disputes arising under: Title VII of the Civil Rights Act of 1964, *see, e.g., Alford* v. *Dean Witter Reynolds, Inc.,* 939 F. 2d 229 (5th Cir. 1991), *Cremin* v. *Merrill Lynch, Pierce, Fenner & Smith, Inc.,* 957 F. Supp. 1460 (N.D. III. 1997), *but see Rosenberg* v. *Merrill Lynch, Pierce, Fenner & Smith, Inc.,* 1998 U.S. Dist. Lexis 877 (D. Mass. 1998)); the Americans with Disabilities Act, (*see, e.g., Austin* v. *Owens-Brockway Glass Container, Inc.,* 78 F. 3d 875, 881 (4th Cir.) cert. denied, 117 S. Ct. 432 (1996); and state statutes of a similar nature (*see, e.g., Kalider* v. *Shearson Lehman Hutton, Inc.,* 789 F. Supp. 179, 180 (W.D. Pa. 1991)).

[7] Employment Discrimination: How Registered Representatives in Discrimination Disputes (GAO/HEHS–94–17, March 30, 1994).

[8] EEOC Notice No. 915.002, July 10, 1997.

[9] 1998 WL 227469 (9th Cir.).

[10] In January 1998, a U.S. District Court in Massachusetts, in *Rosenberg* v. *Merrill Lynch,* 76 FEP 681 (D.Mass 1998), declined to compel arbitration of plaintiff's Title VII and the ADEA claims pursuant to the agreement to arbitrate contained in the Form U–4 plaintiff was required to sign as a condition of her employment.

[11] Exchange Act Release No. 40109 (June 22, 1998) 63 FR 35299 (June 29, 1998).

[12] *Id.*

is developing improvements to the NASD's arbitration procedures for discrimination cases. A representative of the Exchange is participating as an observer in the Working Group's discussions.

The Exchange's proposed rule change will create a narrow exception to the NYSE rule that requires arbitration of all employment-related claims of a registered representatives. Paragraph (a) of the proposed amendment to NYSE Rule 347 adds language indicating that paragraph (b) contains an exception to the requirement to arbitrate employment disputes. Paragraph (b) provides that ''a claim alleging employment discrimination,including any sexual harassment claim, in violation of a statute shall be eligible for arbitration only where the parties have agreed to arbitrate the claim after it has arisen.'' [13]

In addition, under the proposal, statutory employment discrimination claims will not be eligible for arbitration pursuant to any pre-dispute agreement to arbitrate. The Exchange has stated that its action brings its arbitration policy into conformity with the EEOC's ''Policy Statement on Mandatory Binding Arbitration of Employment Discrimination Disputes as a Condition of Employment.'' [14]

In its December 1997 comment letter to the SEC regarding the NASD proposal, the EEOC stated its position ''that *pre*-dispute arbitration agreements, particularly those that mandate binding arbitration of discrimination claims as a condition of employment, are contrary to the fundamental principles reflected in this nation's employment discrimination laws. We recommend therefore, that the proposed rule be revised to permit arbitration of statutory employment discrimination claims only under *post*-dispute arbitration agreements.'' [15]

The Exchange has had a general arbitration provision in its Constitution since 1817. NYSE Rule 600 requires the arbitration of disputes between customers or non-members and members or member organizations, pursuant to any written agreement to arbitrate or upon the demand of the customer or non-member.[16] The vast majority of disputes resolved by Exchange arbitration are business disputes arising out of securities transactions with investors, and contractual disputes between members and their employees. Since 1992, the year following the *Gilmer* decision, the Exchange has received an average of 18 discrimination claims a year.[17] The Exchange's proposed amendments will limit the availability of the Exchange's forum for the resolution of employment discrimination claims to those cases where the parties have agreed to arbitrate the claim after it has arisen, as recommended by the EEOC.

The Exchange is also proposing to amend NYSE Rule 600, adding paragraph (f) that provides that claims alleging employment discrimination, including any sexual harassment claim, shall be eligible for submission to arbitration only where the parties have agreed to arbitrate the claim after it has arisen. This amendment excludes from Exchange arbitration statutory employment discrimination claims of non-registered employees pursuant to pre-dispute arbitration agreements. NYSE Rule 347 only applies to ''registered'' employees.

The EEOC and several members of Congress have endorsed arbitration as an effective means of resolving discrimination claims, provided the parties agree to arbitrate after the claim has arisen. The Exchange's proposed amendment provides a forum for those employees who choose, after a claim has arisen, to resolve their statutory employment discrimination claims through arbitration.

Some employment disputes may contain contract or tort claims as well as statutory employment discrimination claims. Under amended NYSE Rule 347 (and NYSE Rule 600 for non-registered employees who have executed pre-dispute arbitration agreements) these cases may be bifurcated. The employment discrimination claims may be heard in a forum other than the Exchange, such as court, while any claims subject to arbitration may continue to be heard at the Exchange.[18] However, NYSE Rule 347 requires arbitration of claims ''at the instance'' of either party, and therefore may be waived, allowing the entire case to be heard in court. The parties may also avoid bifurcation by agreeing to proceed with all claims in a single forum. Given a choice, after a dispute has arisen, employees in many instances believe that arbitration is preferable to protracted and expensive litigation and will willingly make that choice.[19]

III. Summary of Comments

The Commission received three comment letters on the proposed rule change.[20] Two of the letters supported the proposal [21] and the other oppose it.[22] The comment letter primarily focused on section 3(f) of the Exchange Act and the Federal Arbitration Act (''FAA''). The Exchange responded to the comment letters.[23]

Overview of the Proposed Rule Change

One commenter that supported the proposal did so because it believes that it complies with EEOC policy and the letter and spirit of Tile VII.[24] A second commenter that supported the proposal did so because it believes that arbitration may not be well-adapted for employment discrimination claims, since employees and others have challenged its fairness in employment-related disputes.[25] While supporting the proposal, this commenter suggested that the proposal be modified to include common law employment-related claims (*e.g.*, wrongful termination, defamation) and preserve punitive damages.

The one commenter that opposed the proposal said that it is inconsistent with

[13] Claims ''in violation of a statute'' are not limited to the federal civil rights laws and include all federal, state and local anti-discrimination statutes.

[14] EEOC Notice No. 915.002, July 10, 1997.

[15] Letter from Gilbert F. Casellas, Chairman, EEOC, to Jonathan G. Katz, Secretary, SEC, Re: NASD Proposed Rule Change on Arbitration of Employment Discrimination Claims, December 1997.

[16] NYSE Rule 600(a) provides: ''Any dispute, claim or controversy between a customer or non-member and a member, allied member, member organization and/or associated person arising in connection with the business of such member, allied member, member organization and/or associated person in connection with his activities as an associated person shall be arbitrated under the Constitution and Rules of the New York Stock Exchange, Inc. as provided by any duly executed and enforceable written agreement or upon the demand of the customer or non-member.''

[17] Historically, discrimination claims accounted for less than two percent of the total claims filed at the Exchange, except for 1996 (when discrimination claims accounted for two point six percent) and the first six months of 1998 where, due to a steady decline in case filings generally, discrimination claims accounted for three percent of the cases filed.

[18] The bifurcation of securities industry claims is not unprecedented. Before the Supreme Court's decision in *Shearson* v. *McMahon*, 482 U.S. 220 (1987) (holding that claims under the Exchange Act could be compelled to arbitration), the Supreme Court decided *Dean Witter Reynolds, Inc.* v. *Byrd*, 105 S. Ct. 1238 (1985). In Byrd, the dispute involved allegations of federal securities laws violations and pendent state law claims. The Court compelled the state law claims to arbitration and held that the federal securities laws claims could be heard in court.

[19] *See Duffield* v. *Robertson Stephens & Company*, 1998 WL 227469 (9th Cir.).

[20] October 16, 1998 National Employment Lawyers Association Letter (NELA Letter); October 21, 1998 Securities Industry Association Letter (SIA Letter); and October 21, 1998 New York State Attorney General Dennis Vacco (NY Attorney General Letter).

[21] NELA Letter; and NY Attorney General Letter.

[22] SIA Letter.

[23] Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, Secretary, SEC, dated December 2, 1998.

[24] NELA letter.

[25] NY Attorney General Letter.

section 3(f) of the Exchange Act and the FAA, and that it will lead to unnecessary bifurcation of claims, since it differs from the NASD's recent rule change.[26] This commenter disagreed with the Exchange's interpretation of the relevant case law. It also asserted that arbitration is faster and cheaper than litigation and that plaintiffs are more likely to win in arbitration than in litigation.

Comments Concerning Section 3(f) of the Exchange Act

The SIA said that the proposal, which provides the Exchange as an arbitration forum only for post-dispute arbitration agreements, is inconsistent with section 3(f) of the Exchange Act[27] because it differs from the recent NASD rule change, which does not affect pre-dispute arbitration agreements. The SIA claimed that this would create a system of inconsistent regulations that would eliminate the efficacy of arbitration agreements and create disparate treatment for similarly situated cases at different SROs. It also argued that this would result in bifurcation of claims and an unwarranted increase in litigation.

The Exchange stated in its response letter that section 3(f) does not require that SROs have precisely the same rules. It noted that its proposal is substantially similar to the NASD's recent rule change, since both leave parties' substantive rights and remedies largely unchanged.[28] Further, the Exchange said that bifurcation would only occur if a prospective plaintiff chose to bifurcate his or her claims.

In its letter, the SIA offers a hypothetical case in which a registered representative signs a Form U–4 and an agreement to arbitrate all disputes, including statutory employment discrimination claims. The SIA concludes that under the Exchange's proposal, only the economic claims can be arbitrated. The Exchange interpreted its proposal differently. The Exchange stated that under the NASD's rules, the entire dispute in the SIA's hypothetical would be eligible for arbitration at the NASD or another forum provided for in the Form U–4 or arbitration agreement.

The Exchange also noted that after a dispute has arisen, the parties can agree to proceed with all claims in arbitration or in court. The Exchange recognized that there is some potential for bifurcation, but believes that in most instances parties will, in their own best interests, agree to proceed in a single forum. The Exchange also disagreed with the SIA's argument that the proposal will lead to motion practice or forum shopping.

The Exchange also noted that it has received relatively few claims alleging employment discrimination and only 126 since 1992 (or about two each month). The NASD, in contrast, received 139 such claims in 1997 alone. Nevertheless, the Exchange stated that it will monitor its actual experience under the porposal, including bifurcation, and consider appropriate action in the future if warranted.

The Exchange further stated that its proposal represents a policy decision not to adopt identical procedures because it receives relatively few employment-discrimination claims. The Exchange stated that its decision would not significantly harm securities industry arbitration. The Exchange also noted that even though most Exchange members and member organizations are also NASD members, the few Exchange members that are not may still proceed with arbitration of employment discrimination claims in another forum, such as the American Arbitration Association.

Comments Concerning the FAA

The SIA disagreed with the Exchange's analysis of the case law interpreting the FAA, stating that the Exchange's proposal violates the FAA. The SIA argued that for member firms that have pre-dispute arbitration agreements, the proposal would vitiate an otherwise valid arbitration agreement. The Exchange disagreed. The Exchange stated that the FAA does not mandate arbitration of all claims, but merely the enforcement, upon motion of a party, of privately megotiated arbitration agreements. The Exchange also noted that the FAA does not require an arbitration provider such as the Exchange to make its forum available to hear particular types of cases.

The Exchange also noted that the proposal would not prevent parties with pre-dispute arbitration agreements from agreeing to arbitrate after the dispute arises. Further, as discussed above, the Exchange noted that the proposal neither invalidates pre-disputes arbitration agreements nor forces parties to litigate statutory employment discrimination claims—it merely removes the Exchange as an arbitration forum for such claims.

Comments Concerning Other Issues

The SIA also argued that arbitration is better for plaintiffs in employment dispute cases than litigation in Fedral court, cliting its own study in support.[29] The SIA said that, among other things, in arbitration: plaintiffs prevail more frequently; claims are resolved more quickly; and arbitration is less expensive. In its response, the Exchange neither agreed with nor disputed these SIA statements, stating that its proposal allows plaintiffs to choose the forum they believe is better for them. The Exchange stated that under its proposal, statutory employment discrimination claims are eligible for arbitration at the Exchange if the parties agree to arbitrate after the dispute arises.

Finally, one commenter suggested that voluntary post-dispute arbitration agreements should only be encouraged if they preserve the substantive protections and remedies afforded by statutes. The Exchange responded that the commenter's concern was unwarranted in the post-dispute context. It argued that any disparity in bargaining power between the parties that exists before a dispute arises is missing after the dispute arises, and the employee may freely agree that he or she is better off arbitrating statutory employment discrimination claims. The Exchange also noted that the EEOC supports post-dispute agreements.

IV. Discussion

Under the Act, SROs like the Exchange are assigned rulemaking and enforcement responsibilities to perform their role in regulating the securities industry for the protection of investors and other related purposes. Pursuant to section 19(b)(2) of the Act, the Commission is required to approve an SRO rule change like the Exchange's if it determines that the proposal is consistent with applicable statutory standards.[30] These standards include section 6(b)(5) of the Act, which

[26] SIA Letter.

[27] Section 3(f) of the Exchange Act provides that when the Commission reviews a proposed rule change from an SRO, it must ''consider or determine whether an action is necessary or appropriate in the public interest * * * (and) consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. 15 U.S.C. 78c(f).''

[28] In its response to the comment letters, the Exchange noted that its rule change is ''similar to the recently approved NASD rules in that they exclude claims of statutory employment discrimination from the Exchange's requirement that all employment disputes between a registered representative and a member or member organization be arbitrated.''

[29] Atached to the SIA Letter was its General Counsel's Congressional testimony, which described the SIA study.

[30] The Commission oversees the arbitration programs of the SROs, including the Exchange's, through inspections of the SRO facilities and the review of SRO arbitration rules. Inspections are conducted to identify areas where procedures should be strengthened, and to encourage remedial steps either through changes in administration or through the development of rule changes.

provides that the Exchange's rules must be designed to, among other things, ''promote just and equitable principles of trade'' and ''protect investors and the public interest.'' Section 6(b)(5) also provides that the Exchange's rules may not be designed to ''regulate . . . matters not related to the purposes of the (Exchange Act) or the administration of the (Exchange).''

By changing its rules, the NYSE proposal provides that statutory employment discrimination claims are eligible for submission to arbitration at the Exchange only if the parties agree to arbitrate the claims after they arise. This narrow amendment to the NYSE's rules affects only the arbitration of employment discrimination claims between NYSE members and their employees.[31] This proposal is consistent with the applicable statutory standards.[32] The statutory employment anti-discrimination provisions reflect an express intention that employees receive special protection from discriminatory conduct by employers. Such statutory rights are an important part of this country's efforts to prevent discrimination. It is reasonable for the NYSE to make a policy determination that in this unique area it will not, as an SRO, require or permit arbitration unless there is a post-dispute agreement. It is also proper under the Exchange Act for one SRO's policy determination to differ from that of another.

Section 3(f), raised by one commenter, addresses issues concerning efficiency, competition, and capital formation. The Exchange's proposal fosters competition by providing different approaches for dispute resolution among markets and among brokers and dealers.

The benefits of the Exchange's proposal to employees with employment discrimination claims and to the employer/employee relationship are clear. The Exchange's provision of an arbitration forum for employment discrimination disputes where the parties choose arbitration after the dispute arises is consistent with section 3(f).

With respect to the bifurcation issue raised by the commenters, the Supreme Court, in *Dean Witter Reynolds, Inc.* v. *Byrd*, 470 U.S. 213, 217 (1985), acknowledged the appropriateness of bifurcation between federal statutory and pendant state law claims. The Exchange noted in its response that there is a potential for bifurcation in some cases. However, in many instances it is likely that parties will agree to proceed in a single forum. The Commission notes that the Exchange stated that it will monitor its actual experience under the proposal, including bifurcation, and consider appropriate action in the future if warranted.

The proposal is not, as one commenter suggested, inconsistent with the FAA. The FAA does not mandate that all claims be arbitrated. The FAA provides that privately negotiated arbitration agreements should be enforced, upon motion of a party. Further, the FAA does not require an arbitration provider such as the Exchange to make its forum available to hear particular types of cases.

With respect to other comments that suggested that the NYSE should enact other rules concerning employer/employee arbitration agreements or extend this rule to other causes of action, these issues are left to the NYSE to consider in the first instance.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Exchange Act,[33] that the proposal, SR–NYSE–98–28 be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[34]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–299 Filed 1–6–99; 8:45 am]

BILLING CODE 8010–01–M

[31] The amendment in no way affects the obligation, under NYSE rules, of Exchange members or their employees to arbitrate claims brought by customers against them.

[32] U.S.C. 78o–3(b)(6).

[33] 15 U.S.C. 78s(b)(2).

[34] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40841; File No. SR–NYSE–98–43]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange, Inc., To Set the Monthly Limit on Transaction Charges for 1999 at $400,000 per Member Firm

December 28, 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 December 1, 1998, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On December 19, 1998, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The current fee structure provides for a $400,000 cap on an individual member firm's monthly transaction charges and is in effect through the end of 1998. The proposed revision sets the monthly transaction charge cap at $400,000 for 1999.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the change is to respond to the needs of our constituents with respect to overall competitive market conditions and customer satisfaction.

2. Statutory Basis

The Basis under the Act for the proposed rule change is the requirement under Section 6(b)(4)[4] that an Exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its services.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from James E. Buck, Senior Vice President, NYSE, to Joseph Corcoran, Attorney, Division of Market Regulation, Commission, dated December 19, 1998 (''Amendment No. 1''). In Amendment No. 1, the NYSE proposes to amend its fee schedule to reflect the continuation of the $400,000 cap on an individual member firm's monthly transaction charge.

[4] 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed fee change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited comments regarding the proposed Rule Change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [5] and subparagraph (e)(2) of Rule 19b–4 thereunder.[6] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[7]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying 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 NYSE. All submissions should refer to File No. SR–NYSE–98–43 and should be submitted by January 28, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–310 Filed 1–6–99; 8:45 am]

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[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(e)(2).

[7] In reviewing this proposal, the Commission has considered it is potential impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40837; File No. SR–NYSE–98–29]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. to Adopt Exchange Rule 437 (''Participation in Year 2000 Testing'')

December 28, 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 September 17, 1998, as amended on December 23, 1998,[3] the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal and Amendment No. 1 thereto on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposal consists of the adoption of new Rule 437 (''Participation In Year 2000 Testing'').

The text of the proposed rule change is below. Proposed new language is italicized.

* * * * *

Rule 437

Participation in Year 2000 Testing

Rule 437. Each member not associated with a member organization, and each member organization shall participate in industry testing of computer systems designed to prepare for Year 2000, in a manner and frequency as prescribed by the Exchange.

Supplementary Material * * *

10 Members and member organizations that do not have or use computer systems in the conduct of their business, other than those supplied by the Exchange, are not subject to the requirements of this Rule.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 437 is intended to provide the Exchange with the ability to require certain members and member organizations to participate in industry testing of computer systems in preparation for the Year 2000 in such manner and frequency as prescribed by the Exchange.

Significant industry attention is being directed to proper systems preparation in order to avoid potential computer problems that may arise relating to the Year 2000. The primary concern is that computer systems may incorrectly read the date ''01/01/00'' as being the Year 1900 or another incorrect date.

The securities industry has cooperatively been addressing the potential ''Year 2000 Problem'' in stages which have included assessment of the problem, implementation of remedial measures, and internal testing. The next stage involves industry-wide testing of computer systems. Test participants are scheduled to include, among others, exchanges, registered clearing corporations and depositories, data processors, and broker-dealers.

Testing by and among a broad range of securities industry participants will be of critical importance to ensure that

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard Strasser, Assistant Director, Division of Market Regulation, Commission, dated December 21, 1998. The original filing was not noticed in the **Federal Register**.

the markets continue to operate efficiently after January 1, 2000. To facilitate testing on an integrated, industry-wide basis, the Securities Industry Association (''SIA'') has undertaken to coordinate these efforts. The first test is scheduled for March 6, 1999.

The testing encompassed by proposed Rule 437 may include the integrated industry-wide testing coordinated by SIA and such other testing as the Exchange deems necessary and appropriate. Excluded from the requirements of the rule are members and member organizations that do not use computers in the conduct of their business, other than those provided by the Exchange for order entry and similar purposes such as the Designated Order Turnaround (DOT) and other similar systems.

Background. The Exchange has been conducting an ''awareness'' program since mid-1997. NYSE Information Memorandum 97–30, dated May 22, 1997, required completion of a survey by all members and member organizations to help the Exchange assess the membership's approach and progress in addressing the Year 2000 (''Y2K'') problem.

Subsequently, the Exchange implemented a program of quarterly contacts of members and member organizations by our surveillance coordinators to monitor each organization's progress in meeting its milestones for achieving Y2K readiness. In addition, the Exchange's financial/operations examination scope requires examiners to discuss with key personnel and document as part of the examination each firm's milestones.

NYSE Testing. The Exchange will require all members and member organizations with a direct line to the NYSE, *i.e.,* through the Online Comparison System (''OCS'') and the Common Message Switch (''CMS'') to conduct point-to-point tests [4] and extended point-to-point tests [5] with the NYSE. The types of member organizations with such direct lines include clearing firms, *i.e.,* those that self-clear and those that clear for correspondent firms. Also, Specialist, whether self-clearing or not, must participate in point-to-point testing with the Exchange. The term ''Specialist'' for testing purposes means an organization, not a natural person. Introducing organizations having no direct lines to the Exchange will not be required to test with the Exchange. Rather, it is expected that clearing organizations will test with their respective introducing organizations. The Exchange will monitor this effort and the Exchange may require additional testing if necessary.

SIA Testing. The NYSE expects that its member clearing firms will participate in the SIA-coordinated testing, scheduled for March 6, 1999. While the Exchange anticipates that all clearing firms will participate, the SIA may determine that a particular firm is ''not ready'' or there may not be sufficient capacity for all clearing firms to participate. Should this happen, the Exchange will track alternative testing engaged in by such member organization.

Currently, the Exchange has one hundred forty-four (144) clearing/carrying member organizations and one hundred forty-six (146) introducing organizations that deal with the public, as well as thirty-two (32) specialist organizations. There are also ten (10) registered competitive market makers (''RCMMs'') and one hundred ninety-five (195) independent brokers (''$2 brokers'') who use NYSE systems which will be tested by the Exchange. RCMMs and $2 brokers will not be required to test with the NYSE as they do not have their own electronic links to the Exchange.

Exemptive Authority. The Exchange does not believe it necessary to amend the proposed rule to provide the Exchange with authority to exempt certain types of members or member organizations from testing. This authority currently exists within the proposed rule which provides the Exchange with the flexibility to prescribe the manner and frequency of testing for members and member organizations.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [6] that an Exchange have rules that are designated to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and to perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change is designed to authorize the Exchange to require its members and member organizations to participate in industry-wide testing of computer systems in preparation for the Year 2000 in a manner and frequency prescribed by the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission has concluded, for the reasons set forth below, that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder. Mandating Year 2000 testing and reporting is consistent with Section 6(b)(5) of the Act, which, among other aspects, requires that the rules of an exchange promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing informaiton with respect to, and facilitating transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and a national market system. The Commission believes that the proposed rule change will facilitate the NYSE's and member firms' efforts to ensure the securities markets' continued smooth operation during the period leading up to and beyond January 1, 2000.

The Exchange has requested that the Commission approve the proposed rule change prior to the 30th day after the date of publication of notice of the filing in the **Federal Register** to ensure that members and member firms participate in all required systems testing on a timely basis, in anticipation of industry-wide testing that begins on March 6, 1999. The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of the filing in the **Federal Register.** It is vital that SROs such as the NYSE have the authority to mandate that their member firms participate in Year 2000 testing and that

[4] A point-to-point test verifies that a firm has the ability to receive data form the Exchange, process that data and send the data output to the Exchange.

[5] An extended point-to-point test allows a firm to execute multiple point-to-point tests in one day.

[6] 15 U.S.C. 78f(b)(5).

they report test results (and other Year 2000 information) to the SROs. The proposed rule change will help the NYSE participate in coordinating Year 2000 testing, including industry-wide testing, and in remediating any potential Year 2000 problems. This, in turn, will help ensure that the industry-wide tests and the NYSE's Year 2000 efforts are successful. The proposed rule change will also help the NYSE work with its member firms, the SIA, and other SROs to minimize any possible disruptions the Year 2000 may cause.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 28, 1999.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act[7] that the proposed rule change (SR–NYSE–98–29) and Amendment No. 1 thereto is hereby on an accelerated basis.[8]

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–311 Filed 1–6–99; 8:45 am]

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[7] 15 U.S.C. 78s(b)(2).

[8] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40863; File No. SR–PCX–98–52]

Self-Regulatory Organizations; Pacific Exchange, Inc; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto Relating to Amendments to Rule 2.6(e) on the Prevention of the Misuse of Material, Nonpublic Information

December 30, 1998.

I. Introduction

On October 5, 1998, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission'') or ''SEC''), 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 PCX Rule 2.6(e) which relates to guidelines established for the prevention of the misuse of material, nonpublic information by members and member organizations. On November 3, 1998, the PCX filed an amendment to the proposed rule change.[3] The Commission published the proposed rule change, as amended, for comment in the **Federal Register** on November 27, 1998.[4] No comments were received. This order approves the proposal, as amended.

II. Description of the Proposal

In 1993, the Commission approved a PCX proposal to adopt Rule 2.6(e) relating to the establishment, maintenance and enforcement of procedures designed to prevent the misuse of material, nonpublic information under the Insider Trading and Securities Fraud Enforcement Act of 1988 (''ITSFEA'').[5] The Exchange is proposing to amend the rule in several respects.

First, the rule currently states: ''Members that are required, pursuant to Rule 2.6, ti file SEC Form X–17A–5 with the Exchange on an annual basis shall file contemporaneously with those submissions attestations signed by such members stating that the procedures mandated by this Rule have been established, enforced and maintained,'' The proposed rule change would state that only those organizations for which the exchange is the Designated Examining Authority are required to file ITSFEA compliance acknowledgments stating that the procedures mandated by this rule have been established, enforced and maintained.[6]

The rule currently defines associated person as ''any partner, officer, director or branch manager of a member (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by or under common control with a member, or any employee of a member.'' The Exchange is proposing to change the definition to ''anyone who directly is engaged in the member or member organization's trading-related activities, including general partners, officers, directors, managers (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by or under common control with a member,or any employee of the member or member organization.'' The rule change would exclude limited partners from this definition, unless the limited partners are directly involved in the member organization's trading-related activities.

The Exchange further proposes to define ''employee'' as ''every person who is compensated directly or indirectly by the member or member organization for the solicitation or handling of business in securities, including individuals trading securities for the account of the member or member organization, whether such securities are dealt in on the exchange or dealt over-the-counter.''[7] Thus, independent contractors[8] as well as actual employees will be subject to the requirements of the rule.

The Exchange proposes to delete superfluous language regarding record keeping in Commentary .03 of Rule 2.6(e). Finally, the Exchange proposes to clarify that an Exchange member who is a lessor of a membership, and is not registered and not required to register as a broker-dealer under Section 15 of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Robert Pacileo, Jr., Staff Attorney, PCX, to Kathy England, Assistant Director, Division of Market Regulation, Commission, dated October 29, 1998.

[4] Securities Exchange Act Release no. 40686 (November 18, 1998), 63 FR 65626.

[5] *See* Securities Exchange Act Release No. 33171 (November 9, 1993), 58 FR 60892 (November 18, 1993).

[6] The Exchange notes that this rule change is a codification of the existing practices of the Exchange.

[7] The Commission approved a similar definition that the Philadelphia Stock Exchange proposed in 1997. *See* Securities Exchange Act Release No. 39178 (October 1, 1997), 62 FR 52804 (October 9, 1997.)

[8] *See, e.g.*, Letter from Douglas Scarff, Director, Division of Market Regulation, SEC to Gordon S. Macklin, President, National Association of Securities Dealers, Inc., dated June 18, 1982 (clarifying the status of independent contractors under the Act).

Act, is not subject to the requirements of the rule.

III. Discussion

After careful review, the Commission finds that the proposal to amend PCX Rule 2.6(e) is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and in particular, with the requirements of Section 6(b) of the Act.[9] Specifically, the Commission finds that the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange be designated, among other things, 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.[10] The Commission also believes that the proposed rule change is consistent with the Section 6(b)(1) requirement that an exchange have the capacity to enforce compliance by its members and persons associated with its members with the Act, the rules thereunder, and the rules of the exchange.

The Commission believes that the proposed rule change is a reasonable means of streamlining the procedures designed to prevent the misuse of material, nonpublic information by PCX members. Accordingly, the proposed rule changes should result in more effective and efficient monitoring and enforcement of the PCX of compliance with Rule 2.6(e) by its members without compromising investor protection.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[11] that the proposed rule change (SR–PCX–98–52) 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. 99–302 Filed 1–6–99; 8:45 am]

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[9] 15 U.S.C. 78f(b).

[10] In approving this proposed rule change, the Commission notes that it has also considered the proposed rule's 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).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40852; File No. SR–PCX–98–16]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Telephonic and Electronic Communication Devices on the Trading Floor

December 28, 1998.

I. Introduction

On March 31, 1998, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with 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 require Exchange approval before any telephonic or electronic communications device may be used on the floor of the Exchange. The proposed rule change, including Amendment No. 1 to the proposed rule change was published for comment in the **Federal Register** on April 23, 1998.[3] This order approves the proposal as amended.

II. Description of the Proposal

The Exchange is proposing to adopt new Rule 4.22, which provides that no Member or Member Organization may establish or maintain any telephonic or electronic communication between the floor and any other location, or between locations on the floor, without the prior approval of the Exchange.

The Exchange is also proposing to eliminate Options Floor Procedure Advice (''OFPA'') F–3 relating to communication access to and from the options trading floor.[4] The Exchange believes that proposed Rule 4.22 adequately replaces OFPA F–3, which it believes is obsolete. The Exchange notes that proposed Rule 4.22 is substantially similar to Rule 220 of the American Stock Exchange (''Amex'') and Rule 6.23 of the Chicago Board Options Exchange (''CBOE'').[5]

The Exchange states that it is making this proposed rule change as a housekeeping measure to assure that the Exchange's rules state expressly that Members and Member Organizations must obtain prior approval before establishing or maintaining telephonic or electronic communications between the floor and other locations, or between locations on the floor. The Exchange believes that the provision will improve upon its current rules by providing its Members and Member Organizations with clear notice of the requirement for Exchange approval.

III. Discussion

The Commission finds that the proposed rule change is consistent with Section 6 of the Act[6] and the rules and regulations thereunder. In particular, the Commission believes that the proposal is consistent with the section 6(b)(5)[7] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[8]

In determining to approve the proposal, the Commission notes that proposed Rule 4.22 is substantially similar to Amex Rule 220.[9] Similar to Amex's Rule 220, PCX Rule 4.22 will

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 39881 (April 16, 1998), 63 FR 20236.

[4] OFPA F–3, *Communication Access To and From the Options Trading Floor*, reads as follows: Pursuant to Rule XVII, prior approval by the Exchange will be required before the installation of any form of direct private communication devices, including PT&T and Western Union voice lines and teletype or similar hard copy wire connections. Such approval will be granted only if the connection from the Options Trading Floor terminates in one of the following manners: (1) At an office of a PSE member organization. (2) At a floor facility of a PSE member organization on the Options Trading Floor of another national securities exchange, subject to the approval of that exchange. (3) At either of the Equity Trading Floor of PSE. Approval will not be granted for connections terminating at any facility of a person or organization who or which is not a member organization of PSE. Standard (non-private, non-direct) telephones may be installed on the Options Trading Floor in member organizations assigned floor booths as desired but all requests for such installation must be directed to the Options Floor Manager for purposes of coordination. In making use of communications access to and from the Options Trading Floor members are reminded of the provisions of section 12(k) of Rule I.

[5] Amex Rule 220 is discussed below. CBOE Rule 6.23 provides, in part, that ''No member shall establish or maintain any telephone or other wire communications between his or its office and the Exchange without prior approval by the Exchange.'' *See* CBOE Rule 6.23.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78f(b).

[9] *See* Securities Exchange Act Release No. 33735 (March 8, 1994), 59 FR 12015 (March 15, 1994) (order approving SR–Amex–87–33). The proposed rule differs from Amex Rule 220 in that Amex Rule 220 requires written permission while proposed Rule 4.22 does not require that permission to install a telephonic or electronic communication device on the floor of the Exchange be in writing. *See* Amex Rule 220.

require Exchange approval prior to the installation of any form of telephonic or electronic communication on both the options and equity floors of the Exchange. Currently, pursuant to OFPA F–3, Exchange approval is required before any form of direct private communication may be installed on the options floor of the Exchange.

The Commission supports the Exchange's efforts to continue to review the substance of its rules in response to changes in market structure and technology. In regulating the PCX trading floors and devising their structure, the Commission recognizes the PCX's need to be aware of electronic and telephonic communications that are being installed on its floors. While supporting the Exchange's efforts to monitor the types of communications that are on its trading floors, the Commission expects the PCX to ensure that the rule being approved today is not used to limit access to services offered by the Exchange or applied in a manner inconsistent with sections 6(b)(5)[10] and 6(b)(8)[11] of the Act.[12] Specifically, the Commission expects that proposed Rule 4.22 will not be interpreted in an manner that permits unfair discrimination between customers, issuers, brokers, or dealers, or imposes any unnecessary or inappropriate burden on competition, or is otherwise used to limit member access to Exchange services. Finally, the Commission notes that the PCX should not rely solely on Rule 4.22 as currently drafted to establish a broad based restriction on member communications on its trading floors. Rather, the PCX would need to develop specific rules containing clear and objective criteria on which to base such a restriction and submit that criteria for Commission review under section 19(b) of the Act.[13]

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[14] that the proposed rule change (SR–PCX–98–16) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(8).

[12] *See e.g., William J. Higgins,* 48 S.E.C. 713 (1987).

[13] *See e.g.,* Securities Exchange Act Release No. 40577 (Oct. 20, 1998), 63 FR 57721 (Oct. 28, 1998) (Order approving File No. SR–PSE–97–02); and Amex Rule 220, Commentaries .01–.04.

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–307 Filed 1–6–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40840; File No. SR–PCX–98–45]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Opening Transaction Size in Flex Equity Options

December 28, 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 September 11, 1998, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On October 29, 1998, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The Exchange submitted Amendment No. 2 to the proposed rule change on December 15, 1998.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposal, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to change the requirement for initiating an opening transaction in any FLEX Equity Option[5] series that has no open interest, such that the requirement will now be the lesser of 250 contracts or the number of contracts overlying $1 million of the underlying securities. The text of the proposed rule change is available at the Office of Secretary, the PCX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The PCX 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 PCX proposes to change the requirement for initiating an opening transaction in any FLEX Equity Option series that has no open interest, such that the requirement will now be the lesser of 250 contracts or the number of contracts overlying $1 million of the underlying securities.[6] The Commission recently approved a similar rule change for the Chicago Board Options Exchange (''CBOE'').[7]

The Exchange is proposing the rule change because it believes that the current rule, which states that the minimum value size for an opening transaction shall be 250 contracts, is overly restrictive. The Exchange believes that limiting participation in FLEX Equity Options based on the number of contracts purchased may reduce liquidity and trading interest in FLEX Equity Options for higher priced equities. The Exchange believes that the value of the securities underlying the FLEX Equity Options, if set at the right limit, can also prevent the participation of investors who do not have adequate resources. The Exchange believes that

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Robert Pacileo, Jr., Staff Attorney, PCX, to Joseph Corcoran, Division of Market Regulation (''Division''), Commission, dated October 29, 1998 (''Amendment No. 1''). In Amendment No. 1, the PCX proposes to define the term ''Underlying Equivalent Value'' for FLEX Equity Options and provides an example demonstrating the need for the proposed rule change. *See also* note 6, *infra.*

[4] *See* Letter from Robert Pacileo, Jr., Staff Attorney, PCX, to Michael A. Walinskas, Division, Commission, dated December 14, 1998 (''Amendment No. 2''). In Amendment No. 2, the Exchange proposes to incorporate the term ''Underlying Equivalent Value'' into the text of the proposed rule change and to clarify the example demonstrating the need for the proposed rule change, as set forth in the purpose section below.

[5] FLEX Equity Options are flexible exchange-traded options contracts based on equity securities. FLEX Equity Options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices.

[6] The Commission notes that under the proposal, the $1 million of the underlying securities is defined in Amendment No. 1 as ''Underlying Equivalent Value.'' The definition reads: ''[t]he term 'Underlying Equivalent Value' in respect of a given number of FLEX equity options is calculated by multiplying the number of contracts times the multiplier (100) times the stock price.''

[7] *See* Securities Exchange Act Release No. 40451 (September 18, 1998) 63 FR 51393 (September 25, 1998) (order approving File No. SR–CBOE–98–21).

the number of contracts overlying $1 million in underlying securities is adequate to provide the requisite amount of investor protection.

While it appears that the minimum contract size fulfilled its purpose, the Exchange believes that the result of the existing rule is to require a much greater dollar investment for options on higher priced stocks than for options on lower priced stock. For example, an investor can purchase 250 contracts in a FLEX equity series on low priced stocks (i.e., those worth less than $40) meeting the minimum contract requirement without even investing a minimum of $1 million, while an investor prepared to invest $1 million may be unable to purchase contracts in a FLEX equity series in higher priced stocks (i.e., those worth more than $40). For example, an opening transaction in a FLEX equity series on a stock priced above $40 would reach the $1 million limit before it would reach the contract size limit, i.e. 249 contracts times the multiplier (100) times the stock price ($41.00) totals $1,020,900 in underlying value.[8]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act[9] in that it is designed to perfect the mechanisms of a free and open market, to promote just and equitable principles of trade, to facilitate transactions in securities, and in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will 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 on the proposed rule change were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–98–45 and should be submitted by January 28, 1999.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission believes that the proposed rule change is consistent with the Act and rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5)[10] which requires, among other things, that the rule of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule, which provides a minimum dollar amount for an opening transaction in FLEX Equity Options as an alternative to the existing 250 fixed contract requirement, facilitates transactions in securities while continuing to provide investor protection and foster the public interest. Specifically, the Commission notes the minimum size requirement of 250 contracts for an opening transaction in FLEX Equity Options was designed to ensure that FLEX Equity Options were primarily used by sophisticated, high net worth investors rather than retail investors. Although it appears that the minimum contract size fulfilled its purpose, the Commission agrees with the PCX that the result of the existing rule is to require a greater dollar investment for options on higher priced stocks than for options on lower priced stocks. Under the existing rule, an investor could have purchased 250 FLEX contracts in a stock priced below $40 a share without reaching $1 million. However, under the current rule, an investor wanting to purchase 249 FLEX contracts in a stock priced over $40 a share would not be allowed to enter this FLEX opening transaction even though the investor would have a position valued at over $1 million.

Based on the foregoing, the Commission believes the $1 million minimum amount for an opening transaction in FLEX Equity Options is an appropriate alternative to the 250 fixed contract requirement. In approving the $1 million alternative, the Commission recognizes that an individual can meet the 250 contract limit without purchasing $1 million of FLEX Equity Option contracts. Nevertheless, the Commission believes that the alternative requirements are appropriate because they will provide flexibility to investors and will not unduly restrict access to the FLEX Equity Options market. Further, the Commission believes that the alternative requirements could increase liquidity in the FLEX Equity Options market while continuing to provide for investor protection.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register.** The Commission notices that the proposed rule is similar to one previously approved by the Commission for another exchange.[11] The Commission also notes that the previous filing was submitted for the full 21-day notice and comment period, and the Commission received no public comments. Additionally, the proposed rule change raises no new issue of regulatory concern. The Commission believes, therefore, that granting accelerated approval to the amended proposed rule change is appropriate and consistent with Section 6 of the Act.[12]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–PCX–98–45), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–309 Filed 1–6–99; 8:45am]

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[8] *See* Amendment No. 2, *supra* note 4.

[9] 15 U.S.C. 78f(b)(5).

[10] *Id.*

[11] *See supra* note 7.

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40842; File No. SR–Phlx–98–46]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Amending Rule 229, Philadelphia Stock Exchange Automatic Communication and Execution (''PACE'') System, Raising the Minimum Order Delivery Requirement for Specialists from 1099 Shares to 2099 Shares

December 28, 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 12, 1998, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Rule 229, PACE,[3] to raise the minimum order delivery requirement for specialists from 1099 shares to 20999 shares.

Currently, Rule 229 sets the minimum order delivery requirement for specialists at 1099 shares. Specialists are required to accept and the PACE system will accept, agency orders up to 1099 shares. Phlx Rule 229, Supplementary Material .06 through .10 contains the language requiring specialists to accept orders of 1099 shares over PACE in various situations. Section 229.06 governs market orders entered before the New York market opening. Section 229.07(b) governs market orders entered after the New York market opens. Section 229.09 governs limit orders. Sections 229.10(b)–(c) govern the method of execution given to PACE orders. The proposed rule change will increase the minimums contained in these sections to 2099 shares. Additionally, specialists will continue to be able to raise their own minimum delivery requirements for individual stocks to levels higher than the proposed minimum of 2099 shares.

II. Self-Regulatory Organization's Statements Regarding the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for the Proposed Rule Change

In summary, the Exchange is proposing to extend the benefits of its PACE System to a larger group of orders by increasing the minimum guaranteed order delivery size to 2099 shares. A higher minimum guarantee order delivery size will accommodate and encourage larger orders. By accepting larger orders, the Exchange should be able to attract more customers and larger volume of the PACE System. Thus, the benefits of automated order routing systems, like PACE, would be extended to additional orders.

Currently, Phlx specialists are required to accept delivery of orders up to 1099 shares. By raising this requirement, specialists will, at a minimum, accept PACE orders up to 2099 shares. The Exchange believes that 2099 shares is an appropriate minimum in today's marketplace in light of current volumes. Further, the current level of 1099 shares was set in place in 1986,[4] when market volumes were lower. Additionally, the 2099 level is consistent with the 2099 level at the Chicago Stock Exchange.[5]

Specialists may increase the number of shares that they guarantee to accept above this minimum number. These guarantees, both mandatory and higher voluntary guarantees, tend to encourage customers to direct order flow to the Phlx specialist using the PACE System. Increased requirements should further encourage customers to increase order flow to Phlx specialists using the PACE System. Additionally, specialists may continue to voluntarily increase this requirement above 2099 shares for individual stocks.

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act in general, and in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system by increasing the minimum delivery requirement for specialist using the PACE System, thereby extending the benefits of PACE to additional orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Receive From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the Phlx consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] PACE is the Exchange's automatic order routing and execution system for securities on the equity trading floor. *See* Phlx. Rule 229.

[4] *See* Securities Exchange Act Release No. 23620 (September 16, 1986), 51 FR 33968 (September 24, 1986) (SR–Phlx–86–30).

[5] *See* Chicago Stock Exchange Article XX, Rule 37.

available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–98–46 and should be submitted by January 28, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–300 Filed 1–6–99; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Discretionary Incentive Grants To Support Increased Seat Belt Use Rates

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Announcement of discretionary grants to support innovative seat belt projects designed to increase seat belt use rates.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces a discretionary grant program under Section 1403 of the Transportation Equity Act for the 21st Century to provide funding to States for innovative projects to increase seat belt use rates. The goal of this program is to increase seat belt use to a high level in States across the nation in order to reduce the deaths, injuries, and societal costs that result from motor vehicle crashes. This notice solicits applications from the States, through their Governors' Representatives for Highway Safety, for funds to be made available in fiscal year 2000.

DATES: Applications must be submitted to the office designated below on or before April 7, 1999.

ADDRESSES: Applications must be submitted to the National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD–30), ATTN: Amy Poling, 400 7th Street, SW, Room 5301, Washington, DC 20590. All applications submitted must include a reference to NHTSA Grant Program No. DTNH22–99–G–05050.

FOR FURTHER INFORMATION CONTACT: General administrative questions may be directed to Amy Poling, Office of Contracts and Procurement at (202) 366–9552. Programmatic questions relating to this grant program should be directed to Phil Gulak, Occupant Protection Division (NTS–12), NHTSA, 400 7th Street, SW, Room 5118, Washington, DC 20590, by e-mail at pgulak@nhtsa.dot.gov, or by phone at (202) 366–2725. Interested applicants are advised that no separate application package exists beyond the contents of this announcement.

SUPPLEMENTARY INFORMATION:

Background

On June 9, 1998, Congress enacted the Transportation Equity Act for the 21st Century (TEA–21). Section 1403 of TEA–21 contains a new safety incentive grant program for use of seat belts. Under this program, funds are allocated each fiscal year from 1999 until 2003 to States that exceed the national average seat belt use rate or that improve their State seat belt use rate, based on certain required determinations and findings. Beginning in fiscal year 2000, any funds remaining unallocated in a fiscal year after the determinations and findings related to seat belt use rates are to be used to ''make allocations to States to carry out innovative projects to promote increased seat belt use rates.'' Today's notice solicits applications for funds that will become available in fiscal year 2000 under this latter provision.

TEA–21 imposes several requirements under the innovative projects funding provision. Specifically, in order to be eligible to receive an allocation, a State must develop a plan for innovative projects to promote increased seat belt use rates and submit the plan to the Secretary of Transportation (by delegation, to NHTSA) by March 1. (TEA–21 contemplated issuance of this guidance by December 1, 1998, which would have allowed the States 90 days for submission of plans by March 1, 1999. In order to afford the States the full 90-day period, NHTSA will accept applications until April 7, 1999. NHTSA is directed to establish criteria governing the selection of State plans that are to receive allocations and is further directed to ''ensure, to the maximum extent practicable, demographic and geographic diversity and a diversity of seat belt use rates among the States selected for allocations.'' Finally, subject to the availability of funds, TEA–21 provides that the amount of each grant under a State plan is to be not less than $100,000.

In the following sections, the agency describes the application and award procedures for receipt of funds under this provision, including requirements related to the contents of a State's plan for innovative projects and the criteria the agency will use to evaluate State plans and make selections for award. In order to assist the States in formulating plans that meet these criteria, we have provided an extensive discussion of strategies for increasing seat belt use and of the ways in which States might demonstrate innovation.

Objective of This Grant Program

Seat belts, when properly used, are 45 percent effective in preventing deaths in potentially fatal crashes and 50 percent effective in preventing serious injuries. No other safety device has as much potential for immediately preventing deaths and injuries in motor vehicle crashes. The current level of seat belt use across the nation prevents more than 9,500 deaths and well over 200,000 injuries annually. Through 1997, more than 100,000 deaths and an estimated 2.5 million serious injuries have been prevented by seat belt use.

But, seat belt use rates and the resulting savings could be much greater. As of 1998, the average use rate among States in the U.S. is still well below the goal of 85 percent announced by the President for the year 2000 and at least a dozen States have use rates below 60 percent. On the other hand, use rates of 85–95 percent are a reality in most developed nations with seat belt use laws, and at least six U.S. States and the District of Columbia achieved use rates greater than 80 percent in 1998. A national use rate of 90 percent (the President's goal for 2005), among front seat occupants of all passenger vehicles, would result in the prevention of an additional 5,500 deaths and 130,000 serious injuries annually. This would translate into a $9 billion reduction in societal costs, including $356 million for Medicare and Medicaid.

The objective of this grant program is to increase seat belt use rates, for both adults and children, by supporting the implementation of innovative projects that build upon strategies known to be effective in increasing seat belt use rates. Because one of the best ways to ensure that children develop a habit of buckling up is for parents to properly restrain them in child safety seats, efforts to increase the use of child safety seats may be included among the innovative efforts in a State's plan.

Recent seat belt use increases in California, North Carolina, Louisiana, Georgia, Maryland, and the District of Columbia (see discussion in next section), as well as increases following national mobilizations (Operation ABC, conducted in May and November of 1998), have demonstrated the

[6] 17 CFR 200.30(a)(12).

tremendous potential of highly visible enforcement of strong laws to increase seat belt and child seat use. Given the dramatic results of these programs, NHTSA believes that highly visible enforcement is an important foundation upon which any effective program should be based. An extensive review of the efforts in both the United States and Canada demonstrates that, without a core of highly visible enforcement efforts, high usage rates have not been achieved in any major jurisdiction. (Some of that literature is reviewed in the next section.)

In view of these findings, to be considered for award of funds under this program, the State's innovative project plan should be based on a core component of highly visible enforcement of its seat belt use law. Other components of the plan should support the core enforcement component. If a State is already pursuing a significant and visible enforcement effort, the innovative project plan should detail components that support, expand, or complement the existing enforcement effort. States submitting an innovative project plan with a core component (and supporting components) based on an approach other than enforcement should provide a strong rationale for the proposed approach, preferably accompanied by research evidence, demonstrating the significant potential for increasing seat belt use across the State. NHTSA will carefully consider this rationale in its evaluation of the proposal.

Strategies That Have Proven To Be Effective in Increasing Seat Belt Use

The history of efforts to increase seat belt use in the U.S. and in Canada suggests that highly visible enforcement of a strong seat belt law must be at the core of any effective program. No State has ever achieved a high seat belt use rate without such a component. Most States that have achieved rates greater than 70 percent have also had laws that allow for primary (standard) enforcement procedures.

Canada currently has a national seat belt use rate well above 90 percent. Nearly every province first attempted to increase seat belt use through voluntary approaches involving public information and education. These efforts were effective in achieving only very modest usage rates (no higher than 30 percent). Even the enactment of primary enforcement seat belt laws, without intense and highly visible enforcement, generally was not sufficient to achieve usage rates greater than 60–65 percent. By 1985, it became clear to Canadian and provincial officials that additional efforts would be needed to achieve levels of 80 percent or greater. These efforts, mounted from 1985 through 1995, centered around highly publicized ''waves'' of enforcement, a technique that had already been shown to increase seat belt use in Elmira, New York. When these procedures were implemented in the Canadian provinces, seat belt use generally increased from about 60 percent to well over 80 percent, within a period of 3–5 years.

The U.S. experience has been similar. Prior to 1980, many attempts were made to increase seat belt use through voluntary, persuasive, or educational methods. Most of these efforts were initiated at local, county, or state levels. Nationally, seat belt use remained very low, reaching only about 11 percent. From 1980–1984, efforts to increase seat belt use emphasized networking with various public and private groups to implement public education programs, incentives, and seat belt use policies. While there were some small gains documented in individual organizations, these efforts did not result in any significant increases in seat belt use in any large city or in any State. By the end of 1984, the national usage rate, as measured by a 19-city observational survey, was only about 15 percent.

In 1984, New York enacted the first mandatory seat belt use law and, from 1985 to 1990, at least 37 other States enacted such laws. Most of these laws were secondary enforcement laws that required an officer to observe another traffic violation before stopping and citing a driver for failure to wear a seat belt. During this period of time, the 19-city index of seat belt use increased from about 15 percent to nearly 50 percent. However, as was the case in Canada, the enactment of laws, by itself, was not sufficient to achieve high usage rates.

The Canadian successes using periodic, highly visible ''waves'' of enforcement, as well as scores of such efforts implemented in local jurisdictions in the U.S., prompted NHTSA to implement *Operation Buckle Down* (also called the *''70 by '92'' Program*) in 1991. This two-year program focused on Special Traffic Enforcement Programs (STEPs) to increase seat belt use. It was followed by a national usage rate increase from about 53 percent in 1990 to 62 percent by the end of 1992 (as measured by a weighted aggregate of State surveys). Neither the level of enforcement nor its public visibility was uniform in every State. Had these ''waves'' of enforcement been implemented in a more uniform fashion in every state, the impact would likely have been much greater.

In order to demonstrate the potential of periodic, highly visible enforcement in a more controlled environment, the State of North Carolina implemented its *Click-It or Ticket* program in 1993. In this program, waves of coordinated and highly publicized enforcement efforts (i.e., checkpoints) were implemented in every county. As a result, seat belt use increased statewide, from 65 percent to over 80 percent, in just a few months. This program provided the clearest possible evidence to demonstrate the potential of highly visible enforcement to increase seat belt use in a large jurisdiction (i.e., an entire State).

On the west coast, the State of California expended much effort over the years to enforce its secondary enforcement law. These efforts were successful in increasing the statewide usage rate to about 70 percent, where it plateaued. In 1993, California became the first state to upgrade its seat belt law from secondary to primary enforcement. As a result, the rate of seat belt usage increased by 13 percentage points (from 70 percent to 83 percent) in the first year after the law was upgraded.

The California success was a major factor in rekindling interest among safety officials to upgrade their secondary enforcement laws as a way to increase seat belt use. In 1995, Louisiana became the second State to upgrade from secondary to primary enforcement. As a result, it experienced an 18 percentage point increase (from 50 percent to 68 percent) over the next two years. Next, Georgia upgraded its law and experienced a 15 percentage point increase (from 53 percent to 68 percent). After mounting a highly visible enforcement effort in 1998 (Operation Strap 'N Snap), Georgia's usage increased by another 10 percentage points. Similarly, Maryland upgraded its seat belt law in 1997, immediately mounted a two-month enforcement effort, and experienced a 13 percentage point increase in usage. Most recently, the District of Columbia reported a 24 percentage point gain in usage (from 58% to 82%) after enacting one of the strongest seat belt use laws in the nation and implementing several waves of highly visible enforcement. Taken together, the experiences of North Carolina, California, Louisiana, Georgia, Maryland and the District of Columbia have clearly demonstrated that highly visible enforcement of strong laws has tremendous potential for increasing seat belt use rates.

Visible enforcement of strong laws also appears to be an essential

component of any effective program to increase the use of child safety seats. This is important since, as previously discussed, early use of child safety seats contributes to the later use of seat belts by children and young adults. The relationship between child safety seat use and seat belt use works in the opposite direction as well. Studies conducted in several States have found that child safety seat use is nearly three times as high when a driver is buckled up as when a driver is not buckled up. Thus, efforts to persuade adults to buckle up may be the single most important way to get young children protected. However, with child safety seats, correct use is a major concern and the training of police officers, parents, and advocates is needed to minimize incorrect use and to ensure age-appropriate graduation to seat belts among young children who have outgrown safety seats. Clearly, efforts to increase the use of seat belts and child safety seats are interdependent and complementary.

Prior to the 1977 passage of the Child Passenger Safety (CPS) law in Tennessee, very little progress was made to get young children buckled up. Nationally, child safety seat use was less than 15 percent at the time. However, the Tennessee law was followed by the enactment of primary enforcement CPS laws in all States by 1985. This wave of legislation resulted in a major increase in child restraint use. By 1990, usage was estimated to be above 80 percent for infants and about 60 percent for toddlers.

Unfortunately, problems such as child seat misuse, premature graduation to seat belt use, and variation in age coverage continue to exist. The most recent issue to emerge has been the potential danger posed by passenger side air bags to unrestrained and improperly restrained children. This has led to a new emphasis on programs to increase the proper use of child restraint seats and revitalized law enforcement efforts in this area.

Obstacles to Increasing Seat Belt Use

Over the years, all of the States and many public and private sector organizations have been active participants in efforts to increase seat belt use. Public information and education efforts have been the dominant programs funded over the past two decades. Many States have identified major obstacles to enacting primary seat belt laws or implementing highly visible enforcement programs, even though such programs have been shown to result in high usage rates. Most frequently, State (and local) officials have identified a lack of resources for law enforcement as the single greatest barrier to implementing more intense, highly visible enforcement efforts. This lack of resources extends to funding, human resources, and public information support to conduct such campaigns. Over the past five years, many officials have indicated that, if they had the kind of resources provided to States like North Carolina for the *Click It or Ticket* program, they too would be able to mount similar programs and achieve similar results. The significant amount of funding likely to become available under this grant program, combined with the additional new resources available under other TEA–21 programs, should drastically reduce this obstacle.

The second most frequently mentioned obstacle to mounting highly visible enforcement programs is a lack of support from key State and local leaders. Experience with the national mobilizations (Operation ABC) and with jurisdictions such as North Carolina, Georgia, Maryland and the District of Columbia suggest that this obstacle can be overcome to a significant degree by proactive efforts to gain the understanding, support and endorsement of various public and private organizations. Including a broad spectrum of such organizations as coalition members in the State's occupant protection program can be very effective in obtaining the commitment of key persons (e.g., the governor) and in gaining the support that is essential for sustained, highly visible enforcement efforts. Much innovation can be demonstrated in the way of developing public and official support for strong enforcement efforts.

Another obstacle frequently voiced by State and local enforcement officials is a lack of judicial and prosecutorial support for the enforcement of seat belt and child passenger safety laws. It has frequently been pointed out that an enforcement program can be undermined quickly if prosecutors fail to prosecute seat belt and child safety seat citations and judges repeatedly dismiss such cases. This can be overcome to some extent by educating prosecutors and judges across the State and urging them to value occupant protection laws as highly as any other traffic safety law.

Buckle Up America Campaign

In October 1997, the *Buckle Up America* (BUA) Campaign established ambitious national goals: (a) To increase seat belt use to 85 percent and reduce child-related fatalities (0–4 years) by 15 percent by the year 2000; and (b) to increase seat belt use to 90 percent and reduce child-related fatalities by 25 percent by the year 2005. This Campaign advocates a four part strategy: (1) Building public-private partnerships; (2) enacting strong legislation; (3) maintaining high visibility law enforcement; (4) and conducting effective public education. Central to this Campaign's success is the encouragement of primary seat belt use laws and the implementation of two major enforcement mobilizations each year (Memorial Day and Thanksgiving holidays). During the 1998 mobilizations conducted throughout the week surrounding Memorial Day and the week surrounding Thanksgiving, between 4,000 and 5,000 law enforcement agencies participated in Operation ABC. Their efforts were covered by several hundred national and local television organizations in all major media markets. More than 1,500 print articles were written in response to each mobilization. As a result of the May mobilization, seat belt use increased significantly nationwide as more than 6,000,000 motorists were convinced to buckle up. Since that time, seat belt use has continued to increase significantly. The BUA Campaign and the efforts of the Air Bag and Seat Belt Safety Campaign (including Operation ABC) provide a useful framework for the implementation of this grant program. They provide a blueprint for projects that States may wish to implement, using funds to be made available in accordance with this notice. Conversely, this grant program provides an unprecedented opportunity to achieve the ambitious goals established under the BUA Campaign.

Examples of Effective Innovative Strategies

A State may demonstrate innovation in its enforcement efforts in a number of ways. If a State is not currently engaged in any form of highly visible enforcement of its occupant protection laws, implementation of such a program, in and of itself, would be innovative to that State. Additionally, innovation may be demonstrated in gaining essential support, implementing statewide training programs, and planning the logistics for wide scale enforcement and public information activities. For States that already are engaged in substantial enforcement efforts, innovation can be demonstrated by expanding these efforts. This might include finding more effective ways to reach rural, urban, or diverse groups with public information messages designed to address the problem of low seat belt use among those groups. States

that have upgraded their laws recently to allow for primary enforcement may wish to initiate innovative ways to implement, enforce, and publicize their newly enacted legislation. For States with secondary enforcement laws, where a motorist must be stopped for another offense before being cited for failure to buckle up, innovation may be demonstrated by integrating the enforcement of the seat belt law with enforcement of another traffic safety law (e.g., an alcohol impaired driving law). Many opportunities for innovation exist, regardless of the State's current seat belt use rate or its ongoing efforts to increase it.

Following are some examples of innovative activities in support of a core component of enforcement:

—Initiate, or expand in novel ways, the operation of existing State or local enforcement-related campaigns;

—Implement highly visible seat belt and child safety seat enforcement efforts in major urban areas, in rural areas, or throughout the State;

—Expand participation across the State in semi-annual national seat belt enforcement mobilizations (i.e., *Operation ABC* conducted in May and November);

—Plan and support statewide efforts to train and motivate law enforcement officers, prosecutors and judges to consistently enforce, prosecute and adjudicate occupant protection law violations;

—Mount a highly visible program to implement newly enacted legislation which upgrades the State's seat belt or child passenger safety law;

—Initiate or expand public information and education programs designed to complement newly upgraded legislation and/or enhanced statewide enforcement efforts;

—Establish new partnerships and coalitions to support ongoing implementation of legislation or enforcement efforts (e.g., health care and medical groups, partnerships with diverse groups, businesses and employers);

—Initiate or expand public awareness campaigns targeted to specific populations that have low seat belt use (e.g., part-time users; parents of children 0–15 years old; minority populations, including Native Americans; rural communities; males 15–24 years old; occupants of light trucks and sport utility vehicles);

—Implement a statewide program to train law enforcement personnel on the importance of seat belt use, the specifics of the State's seat belt use law, and the importance of enforcing such law to increase usage rates;

—Initiate or expand standardized child passenger safety training of police officers and/or child passenger safety checks and/or clinics across broad geographical areas (e.g., statewide, in major metropolitan areas, in rural areas of the State);

—Initiate, or expand in novel ways, campaigns which use enforcement of other traffic laws (e.g., driving while intoxicated laws) as a means for implementing highly visible enforcement of seat belt use laws.

If a State wishes to submit a plan proposing a core component other than enforcement, it should demonstrate innovation by proposing to perform similar supporting activities. The State should demonstrate that these activities have the potential to increase seat belt use across the State.

NHTSA Involvement

In support of the activities undertaken under this grant program, NHTSA will:

1. Provide a Contracting Officer's Technical Representative (COTR) to coordinate activities between the Grantee and NHTSA during grant performance.

2. Provide information and technical assistance from government sources within available resources and as determined appropriate by the COTR.

3. The COTR will serve as a liaison between NHTSA Headquarters, NHTSA Regional Offices and the grantee.

Availability of Funds and Period of Support

The efforts solicited in this announcement will be supported through the award of grants to a number of States, on the basis of the evaluation criteria identified below. The number of grants awarded will depend upon the merits of the applications received, the amount of funds available in fiscal year 2000, and the size of the grants awarded to individual States. The total amount of funds to be made available is not known at this time, as it is dependent upon appropriations by the Congress and the amount of allocations to States based on State seat belt use rates achieved (see discussion in Background section, above). However, the agency estimates that in excess of $20 million might become available for this program in fiscal year 2000.

In accordance with TEA–21, the minimum amount of an individual grant award to a State will be $100,000, subject to the availability of funds. However, NHTSA may make individual awards in amounts greater than $100,000, subject to the availability of funds and consistent with the merits of a State's application. For example, a State may choose to submit an innovative project plan detailing ambitious activities for the upcoming year that require a significant commitment of resources during that year. Alternatively, a State may describe a comprehensive effort that is resource-intensive because the activities will take place over the course of several years. (This latter multi-year approach is permissible because TEA–21 provides that funds awarded to a State under this program are available for obligation in the State for a period of three years beyond the fiscal year during which the funds are awarded.) In either case, NHTSA may decide, subject to the availability of funds and consistent with the merits of the State's application, to award an amount of funds greater than $100,000 to a State. Consequently, States desiring to implement ambitious innovative project plans requiring a significant commitment of resources for a single year or a multi-year period of performance (up to four years, until the end of fiscal year 2003) are encouraged to do so, provided the necessary budget information is provided to support such a plan. In making award determinations, NHTSA may choose to fund portions of a plan (e.g., some but not all activities within a plan or some but not all years of a multi-year plan) or to reject a plan, after review in accordance with the evaluation criteria. There is no cost-sharing requirement under this program.

Allowable Uses of Federal Funds

Allowable uses of Federal funds shall be governed by the relevant allowable cost section and cost principles referenced in 49 CFR Part 18—Department of Transportation Uniform Administrative Requirements for Grants and Cooperative Agreement to State and Local Governments. Funds provided to a State under this grant program shall be used to carry out the activities described in the State's plan for which the grant is awarded.

Eligibility Requirements

Only the 50 States, the District of Columbia, and Puerto Rico, through their Governors' Representatives for Highway Safety, will be considered eligible to receive a grant under this program.

Application Procedures

Each applicant must submit one original and two copies of the application package to: NHTSA, Office of Contracts and Procurement (NAD–30), ATTN: Amy Poling, 400 7th Street, SW, Room 5301, Washington, DC 20590. An additional three copies will facilitate the review process, but are not required.

Applications must be typed on one side of the page only. Applications must include a reference to NHTSA Grant Program No. DTNH22–99–G–05050. Only complete application packages submitted by a State's Governor's Representative for Highway Safety on or before April 7, 1999 will be considered.

Application Contents

1. The application package must be submitted with OMB Standard Form 424, (Rev. 7–97 or 4–88, including 424A and 424B), Application for Federal Assistance, with the required information provided and the certified assurances included. While the Form 424–A deals with budget information, and section B identifies Budget Categories, the available space does not permit a level of detail which is sufficient to provide for a meaningful evaluation of the proposed costs. A supplemental sheet should be provided which presents a detailed breakdown of the proposed costs (direct labor, including labor category, level of effort, and rate; direct materials, including itemized equipment; travel and transportation, including projected trips and number of people traveling; subcontracts/subgrants, with similar detail, if known; and overhead), as well as any costs the applicant proposes to contribute or obtain from other sources in support of the projects in the innovative project plan. Where a multi-year effort is proposed, the estimated costs should be separated and proposed on the basis of individual Federal fiscal years, i.e., beginning October 1, 1999 through September 30, 2000; October 1, 2000 through September 30, 2001; etc.

2. Applications shall include a State plan detailing innovative projects to increase seat belt use rates. The State plan must provide the following information:

a. An *Introduction* section with a brief general description of the State's population density, any unique diversity characteristics, a short summary of the status of seat belt/child safety seat legislation in the State, and the pattern of estimated seat belt/child safety seat use rates for the State.

b. A *Discussion* section that presents the principal goals and objectives of the proposed plan and articulates the potential to increase seat belt use rates, with supporting rationale. This section should also identify any proposed partnerships, coalitions, or leveraging of resources that will be employed as a means to implement integrated key enforcement, public information, or educational activities. Any known barriers to implementation of the State's plan should be identified, with a discussion of how such barriers will be overcome. Relevant data based on planning studies should be included or footnoted. Supporting documentation from concerned interests other than the applicant may be included. Documentation of existing public and/or political support may be included (e.g. endorsement of the Governor, State Police or Patrol, State Association of Chiefs of Police, State Medical Society, etc).

c. A *Project Description* section, with a detailed description of the innovative projects to be undertaken by the State under the plan, including, for each activity:

(1) The key strategies to be employed to achieve a significant use rate increase across the State (e.g., enforcement, public information and education, training, incentive/reward efforts);

(2) The innovative features (e.g. new participants, expanded efforts, unique resources, design or technological innovations, reductions in cost or time, integration with existing State efforts, extraordinary community involvement); and

(3) A work plan listing milestones in chronological order to show the schedule of accomplishments and their target dates.

d. A Personnel section, which identifies the proposed program manager, key personnel and other proposed personnel considered critical to the successful accomplishment of the activities under the State's plan. A brief description of their qualifications and respective responsibilities shall be included. The proposed level of their effort and contributions to the various activities in the plan shall also be identified. Each organization, corporation, or consultant who will work on the innovative project plan shall be identified, along with a short description of the nature of the effort or contribution and relevant experience.

e. An Evaluation section, with a description of how the State will evaluate and measure the outcomes of the activities in its innovative project plan. This section should describe the methods for assessing actual results achieved under the plan. Outcomes can be documented in a number of ways. Increases in observed seat belt and child safety seat use provide the ultimate measure of success. However, intermediate measures also may be used to measure progress. These measures may include: (i) increases in the number of law enforcement personnel trained to enforce occupant protection laws; (ii) increased statewide participation in semi-annual enforcement mobilizations (Operation ABC); (iii) increased public perception of ongoing enforcement and public education activities; (iv) increased numbers of public and private sector partners involved in implementing the statewide programs; (v) incentive programs to complement enforcement efforts; or (vi) extent of integration of occupant protection enforcement activities with other State enforcement activities. Data sources should be identified and collection and analysis approaches should be described.

Application Review Procedures and Evaluation Criteria

Initially, all applications will be reviewed to confirm that the applicant is an eligible recipient and to assure that the application contains all of the information required by the Application Contents section of the notice. Each complete application from an eligible recipient then will be evaluated by an Evaluation Committee. The applications will be evaluated using the following criteria, which are listed in descending order of importance:

1. The goal(s) the State proposes to achieve, as described in its innovative project plan, the overall soundness and feasibility of the plan for achieving the goal(s), and the potential effectiveness of the proposed activities in the plan for increasing seat belt use. The extent to which the plan details a significant and comprehensive enforcement effort or, where another approach is selected, provides evidence supporting the effectiveness of the proposed approach will be considered.

2. The organizational resources the State will draw upon, and how the State will provide the program management capability and personnel expertise to successfully perform the activities in its innovative project plan. The adequacy of the proposed personnel (including subcontractor and subgrantee personnel) to successfully perform the proposed activities, including qualifications and experience, the various disciplines represented and the relative level of effort proposed for the professional, technical and support staff, will be considered.

Depending upon the results of the evaluation process, NHTSA may suggest revisions to applications as a condition of further consideration to ensure the most efficient and effective performance consistent with the objectives of achieving increased seat belt use.

Special Award Selection Factors

After evaluating all applications received, in the event that insufficient funds are available to award all

requested amounts to all meritorious applicants, NHTSA may consider the following special award factors in the award decision:

1. Every effort will be made to provide grants to a diverse group of States representing a broad range of geographic, demographic, and use rate characteristics. Thus, preference may be given to an applicant which fits the need for such diversity.

2. Preference may be given to an applicant on the basis that its application is effectively integrated and coordinated with other ongoing efforts in the State, resulting in additional opportunity for immediately increasing usage rates. This could include proposed cost-sharing strategies, and/or the use of other federal, State, local and private funding sources to complement those available under this announcement.

Terms and Conditions of the Award

1. Prior to award, each grantee must comply with the certification requirements of 49 CFR Part 20, Department of Transportation New Restrictions on Lobbying, and 49 CFR Part 29, Department of Transportation Government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirements for Drug Free Workplace (Grants).

2. Reporting Requirements and Deliverables:

a. Quarterly Progress Reports should include a summary of the previous quarter's activities and accomplishments, as well as the proposed activities for the upcoming quarter. Any decisions and actions required in the upcoming quarter should be included in the report.

b. Draft Final Report: The grantee shall prepare a Draft Final Report that includes a description of the innovative projects conducted, including partners, overall program implementation, evaluation methodology and findings from the program evaluation. In terms of information transfer, it is important to know what worked and what did not work, under what circumstances, and what can be done to avoid potential problems in future projects. The grantee shall submit the Draft Final Report to the COTR 60 days prior to the end of the performance period. The COTR will review the draft report and provide comments to the grantee within 30 days of receipt of the document.

c. Final Report: The grantee shall revise the Draft Final Report to reflect the COTR's comments. The revised final report shall be delivered to the COTR 15 days before the end of the performance period. The grantee shall supply the COTR:

—A camera ready version of the document as printed.

—A copy, on appropriate media (diskette, Syquest disk, etc.), of the document in the original program format that was used for the printing process.

Note: Some documents require several different original program languages (e.g., PageMaker was the program format for the general layout and design and Power point was used for charts and yet another was used for photographs, etc.). Each of these component parts should be available on disk, properly labeled with the program format and the file names. For example, Power point files should be clearly identified by both a descriptive name and file name (e.g., 1994 Fatalities—chart1.ppt).

—A complete version of the assembled document in portable document format (PDF) for placement of the report on the world wide web (WWW). This will be a file usually created with the Adobe Exchange program of the complete assembled document in the PDF format that will actually be placed on the WWW. The document would be completely assembled with all colors, charts, side bars, photographs, and graphics. This can be delivered to NHTSA on a standard 1.44 diskette (for small documents) or on any appropriate archival media (for large documents) such as a CD ROM, TR–1 Mini cartridge, Syquest disk, etc.

—Four additional hard copies of the final document.

3. During the effective performance period of grants awarded as a result of this announcement, the grant shall be subject to the National Highway Traffic Safety Administration's General Provisions for Assistance Agreements, dated July 1995.

Issued on: December 31, 1998.

Susan G. McLaughlin,

Acting Associate Administrator for Traffic Safety Programs.

[FR Doc. 99–268 Filed 1–6–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–98–4034; Notice 15]

Pipeline Safety: Natural Gas Pipeline Company of America; Approved for Pipeline Risk Management Demonstration Program

AGENCY: Research and Special Programs Administration, Office of Pipeline Safety, DOT.

ACTION: Notice of risk demonstration project approval and finding of no significant impact.

SUMMARY: The Research and Special Programs Administration's (RSPA) Office of Pipeline Safety (OPS) has issued a Risk Management Demonstration Project Order authorizing Natural Gas Pipeline Company of America (NGPL) to participate in the Pipeline Risk Management Demonstration Program. OPS has also made a finding that NGPL's demonstration project will have no significant impacts on the environment.

ADDRESSES: Comments on this or any other demonstration project will be accepted in the Docket throughout the 4-year demonstration period. Comments should be sent to the Dockets Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street, SW, Washington, DC 20590–0001, or you can E-Mail your comments to ops.comments@rspa.dot.gov. Comments should identify the docket number, RSPA–98–4034. Persons should submit the original comment document and one (1) copy. Persons wishing to receive confirmation of receipt of their comments must include a self-addressed stamped postcard. The Dockets Facility is located on the plaza level of the Nassif Building in Room 401, 400 Seventh Street, SW, Washington, DC. The Dockets Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Elizabeth Callsen, OPS, (202) 366–4572, regarding the subject matter of this notice and environmental assessment. Contact the Dockets Unit, (202) 366–9322, for docket material. Comments may also be reviewed on line at the DOT Docket Management System website at http://dms.dot.gov/.

SUPPLEMENTARY INFORMATION:

Project Authorization

On December 31, 1998, OPS, pursuant to 49 U.S.C. 60126, issued NGPL a Risk

Management Demonstration Project Order authorizing NGPL to conduct a risk management project on the pipeline system it operates, covering approximately 13,000 miles in 14 states. These states are Arkansas, Colorado, Iowa, Illinois, Indiana, Kansas, Louisiana, Missouri, Nebraska, New Mexico, Oklahoma, Texas, Wisconsin and Wyoming. OPS has determined, after a comprehensive review of NGPL's demonstration project, that the project is expected to provide superior safety and environmental protection.

More detailed descriptions of all aspects of the NGPL demonstration project, including the OPS rationale for approving the project, are available in the following documents:

(1) 63 FR 46497, ''Pipeline Safety: Intent To Approve Project and Environmental Assessment for the Natural Gas Pipe Line Company of America Pipeline Risk Management Demonstration Program'', September 1, 1998.

(2) ''Demonstration Project Prospectus: Natural Gas Pipeline Company'', available by contacting Elizabeth M. Callsen at 202–366–4572. Includes a map of the NGPL pipeline system.

(3) ''Natural Gas Pipeline Company—Application and Work Plan for DOT–OPS Risk Management Demonstration Program'', as modified by the December 18, 1998, letter from KN Energy, Inc. to OPS.

(4) ''OPS Project Review Team Evaluation of Phillips Demonstration Project''.

(5) ''Risk Management Demonstration Project Order'' for Natural Gas Pipeline Company, December 31, 1998.

These documents and other information pertaining to the NGPL project are accessible to the public via the Pipeline Risk Management Information System (PRIMIS), on the OPS Home Page at http://ops.dot.gov.

Finding of No Significant Impact (FONSI)

OPS has reviewed NGPL's project for conformity with section 102(2)(c) of the National Environmental Policy Act (42 U.S.C. 4332), the Council on Environmental Quality implementing regulations (40 CFR parts 1500–1508), and Department of Transportation Order 5610.1c, Procedures for Considering Environmental Impacts. OPS conducted an Environmental Assessment of NGPL's project (63 FR 46497, ''Pipeline Safety: Intent To Approve Project and Environmental Assessment for the Natural Gas Pipe Line Company of America Pipeline Risk Management Demonstration Program'').

OPS received no public comment on the Environmental Assessment.

Based on the analysis and conclusions reached in the Environmental Assessment and the analyses conducted in the above-listed documents, OPS has found that there are no significant impacts on the environment associated with this action. The Environmental Assessment and the other above-listed documents are incorporated by reference into this FONSI. To summarize, the reason that the project will not have a significant effect on the human environment is that the project as now defined requires no regulatory exemption. This project is expected to demonstrate that risk management techniques can be successfully applied toward improving safety and environmental protection. All activities to be performed by NGPL as part of the demonstration project—including investigating risks, integrating risk information, identifying and allocating resources to manage risks, institutionalizing risk management within the company, and effectively communicating about risks with company employees, OPS, and other stakeholders—exceed what is currently required by pipeline safety regulations. This rationale is further discussed in the Environmental Assessment referenced above. When OPS determines that it plans to grant a regulatory exemption, it will amend the Environmental Assessment to analyze any environmental impacts of the proposed exemption.

Issued in Washington, DC, on December 31, 1998.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 99–291 Filed 1–6–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33688]

State of Georgia, Department of Transportation—Acquisition Exemption—Line of Central of Georgia Railroad Company

The State of Georgia, Department of Transportation (GDOT), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Central of Georgia Railroad Company (COG) certain railroad assets, including approximately 42.4 miles of rail line. The assets consist of two portions of rail line: (1) a previously abandoned line of railroad between milepost GF–152.2 near Vidalia, Toombs County, GA, and milepost GF–171.0 near Kirby, Emanuel County, GA; and (2) COG's active rail line between milepost GF–171.0 near Kirby and milepost 194.6 near Midville, Burke County, GA.

GDOT, COG, and Ogeechee Railway Company (Ogeechee), a Class III rail carrier, will enter into certain agreements whereby GDOT will acquire from COG fee title to certain railroad assets, but not including the right to conduct common carrier freight operations. The assets will be sold by COG to GDOT, with COG retaining a permanent easement to conduct operations over the line. In a separate and concurrently executed agreement, COG will transfer its retained easement and all rights and obligations pertaining to the assets, including but not limited to the right to maintain and repair the physical assets on the line to Ogeechee, which will continue to conduct freight operations over the line.[1] It is intended that Ogeechee will assume COG's common carrier obligation, and that neither COG nor GDOT will have a common carrier obligation to provide freight services when the transaction is completed.

The transaction was scheduled to take place as soon as possible after the December 18, 1998 effective date of the notice of exemption.

This transaction is related to STB Finance Docket No. 33689, *Ogeechee Railway Company—Acquisition and Operation Exemption—Line of Central of Georgia Railroad Company,* wherein Ogeechee seeks to acquire the right to conduct common carrier freight operations over the line being acquired by GDOT.

If the notice contains false or misleading information, the exemption is void *ab initio*.[2] Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33688, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Luke Cousins, Georgia Department of

[1] Ogeechee currently leases and operates over both portions of the line. *See Ogeechee Railway Company—Lease Exemption—Line of Central of Georgia Railroad Company,* STB Finance Docket No. 33683 (STB served Dec. 16, 1998).

[2] A motion to dismiss has been filed in this proceeding. The motion will be addressed in a subsequent Board decision.

Transportation, #2 Capitol Square, Atlanta, GA 30334–1002.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: December 29, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–204 Filed 1–6–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33689]

Ogeechee Railway Company—Acquisition and Operation Exemption—Line of Central of Georgia Railroad Company

The Ogeechee Railway Company (Ogeechee), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire from Central of Georgia Railroad Company (COG) the right to conduct common carrier freight operation over approximately 42.4 miles of rail line as follows: (1) a previously abandoned line of railroad between milepost GF–152.2 near Vidalia, Toombs County, GA and milepost GF–171.0 near Kirby, Emanuel County, GA; and (2) COG's active rail line between milepost GF–171.0 near Kirby and milepost 194.6 near Midville, Burke County, GA.[1]

The transaction was scheduled to take place as soon as possible after the December 16, 1998 effective date of the notice of exemption.

This transaction is related to STB Finance Docket No. 33688, *State of Georgia, Department of Transportation—Acquisition Exemption—Line of Central of Georgia Railroad Company,* wherein the State of Georgia, through its Department of Transportation is acquiring certain railroad assets of COG, including the above-noted 42.4-mile line of railroad, but not including the right to conduct common carrier freight operations.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33689, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John M. Robinson, 9616 Old Spring Road, Kensington, MD 20895.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: December 29, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–205 Filed 1–6–99; 8:45 am]

BILLING CODE 4915–00–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33694]

City of Oakland, a Municipal Corporation of the State of California, Acting by and Through its Board of Port Commissioners—Acquisition Exemption—Union Pacific Railroad Company

The City of Oakland, a municipal corporation of the State of California, acting by and through its Board of Port Commissioners (Port of Oakland), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire the physical assets of a rail line and the underlying right-of-way from Union Pacific Railroad Company (UP), between milepost 4.97 and milepost 5.80, in Oakland, CA, a distance of approximately 0.83 miles. UP will retain a permanent, exclusive easement to provide rail freight service over the line.

The transaction is expected to be consummated on or shortly after December 18, 1998, but not later than December 31, 1998.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.[1]

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33694, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karl Morell, BALL JANIK LLP, Suite 225, 1455 F Street, N.W., Washington, DC 20005.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: December 29, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–203 Filed 1–6–99; 8:45 am]

BILLING CODE 4915–00–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations: ''Picasso: Painter and Sculptor in Clay''

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985). I hereby determine that the objects to be included in the exhibit, ''Picasso: Painter and Sculptor in Clay,'' imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the The Metropolitan Museum of Art from March 1–June 6, 1999 is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTRACT: For a copy of the list of exhibit objects or for further information, contact Nelia Sheahan, Assistant General Counsel, Office of the General Counsel, 202/619–5030, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW, Washington, DC 20547–0001.

Dated: December 31, 1998.

Les Jin,

General Counsel.

[FR Doc. 99–314 Filed 1–6–99; 8:45 am]

BILLING CODE 8230–01–M

[1] Ogeechee currently leases and operates over both portions of the line. *See Ogeechee Railway Company—Lease Exemption—Line of Central of Georgia Railroad Company,* STB Finance Docket No. 33683 (STB served Dec. 16, 1998).

[1] The Port of Oakland indicates that it will shortly be filing a motion to dismiss this notice on grounds that the Board lacks jurisdiction over the involved purchase. If such a motion is filed, it will be dealt with in a subsequent Board decision.

UNITED STATES INFORMATION AGENCY

Future Leaders Exchange Program Civic Education Workshop; Request for Proposals

Program Title: Civic Education Workshop

Summary: The Office of Citizen Exchanges, Division of the NIS Secondary School Initiative of the United States Information Agency's Bureau of Educational and Cultural Affairs, announces an open competition for the Civic Education workshop for the Future Leaders Exchange (FLEX) Program. Goal of the workshop is to broaden the participants' knowledge and understanding of the democratic concepts that are integral to a civil society and provide them with tools they can take home to aid in the transformation of their countries. Public and private nonprofit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to develop and conduct a one-week workshop in Washington, D.C., in Spring, 1999, on elements of a civil society for 80–100 high school students from the New Independent States (NIS) of the former Soviet Union who are attending school in the United States during academic year 1998/99. Participants will be selected through an essay contest from among a group of 925 students who are participating in the Division's Future Leaders Exchange (FLEX) program. The maximum grant award will be $100,000. Provision of cost sharing to maximize the number of participants will be looked at very favorably.

Program Information: The recipient of the grant is responsible for developing and conducting the Civic Education workshop based on guidelines set forth by the Division. The grantee organization will also be responsible for coordinating travel arrangements for each participant from his/her host community to Washington, D.C., and return, and for providing room and board for students during their time in Washington. The grantee must be amendable to working with USIA and the Department of State in arranging certain briefings and visits, as the opportunity arises.

Overview: The workshop should provide an opportunity for participants to gain a better understanding of the democratic concepts and values that are such an integral part of American society and culture. Concepts such as citizen empowerment, volunteerism, community action, and debate should be included in program components. The program should also enable participants to learn firsthand about the federal system of government, observe government institutions, hear about and discuss issues on the federal agenda, and interact with government officials. Special attention should be paid to those issues that will be especially significant to people from the former Soviet Union. The program should be arranged for seven days, including arrival and departure.

The grantee organization will be provided with the names of the students who will have been chosen through competing in an essay contest. The essays will have been reviewed by independent, objective selectors.

Guidelines: The workshop should be held in Spring, 1999, preferably in March or April. Proposals must effectively describe the organization's ability to accomplish the following essential components of the program:

1. Provide a Civic Education workshop in Washington, D.C., as described above and, preferably, at the time period indicated. Program components should include sessions on U.S. domestic and foreign policy, the role of the media in the United States, citizen empowerment, volunteerism and community activism, and federalism.
2. Provide training for organization staff on NIS society and culture.
3. Provide housing and meals for the students throughout the program.
4. Arrange travel for students from their U.S. host communities to Washington, D.C., and return in coordination with FLEX placement organizations. (Note: Students will likely be coming from most of the 50 states.) Provide ground transportation for students in the D.C. area, including to and from airports.
5. Provide opportunities to attend cultural events and visit museums and monuments.
6. Coordinate with USIA's Division for the NIS Secondary School Initiative (E/PY) and the Office of Congressional and Intergovernmental Affairs (CL) in making appropriate arrangements for individual meetings for all workshop participants with their respective members of Congress (either Senator or Representative).
7. Provide staff to assist in case of medical emergencies.
8. Incorporate a program component designed to facilitate students' transition from the D.C. program to their host communities. Include a description of the ways in which students will be encouraged to share what they have learned, both in their U.S. host communities and when they return to their home countries.
9. Provide a mechanism for evaluation of the program in terms of its impact on the students and its success in fulfilling the objectives.

A competitive proposal will incorporate important elements of American culture in sessions that are largely interactive and designed to appeal to high school-age students. The program must be substantive and academic while, at the same time, be paced realistically to meet the needs of young people.

Significant cost sharing is important since it will enable a greater number of students to participate. Therefore, those proposals that show more generous and creative cost sharing will be more favorably viewed.

Please refer to the Program Objectives, Goals, and Implementation (POGI) section of the Solicitation Package for greater detail regarding the design of component parts as well as other program information.

Budget guidelines: Organizations must bid on arranging a program for a minimum of 80 students but may increase the number of participants through cost sharing the additional expenses incurred. Proposals that maximize the number of students will be favorably viewed. One grant will be awarded for this activity. It is estimated that the total costs of the Civil Education workshop will average $1,000 per NIS participant for a one-week program, including domestic travel.

Applicants must submit a comprehensive budget for the entire program. Awards may not exceed $100,000. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Please refer to the Solicitation Package for further details and for complete budget guidelines and formatting instructions.

Announcement title and number: All correspondence with USIA concerning this RFP should reference the above title and number E/P–98–28.

For further information contact: The NIS Secondary School Initiative Division, E/PY, Room 568, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547, telephone (202) 619–6299; fax (202) 619–5311; e-mail: <daronson@usia.gov> to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify USIA

Program Officer Dee Aronson on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition with applicants until the proposal review process has been completed.

To download a solicitation package via internet: The entire Solicitation Package may be downloaded from USIA's website at http://e.usia.gov/education/rfps. Please read all information before downloading.

To receive a solicitation package via fax on demand: The entire Solicitation Package may be requested from the Bureau's Grants Information Fax on Demand System, which is accessed by calling 202/401–7616. The Table of Contents listing available documents and order numbers should be the first order when entering the system.

Deadline for proposals: All proposal copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on Monday, February 5, 1999. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and 10 copies of the application should be sent to: U.S. Information Agency, Ref.: E/PY–98–28, Office of Grants Management, Room 568, 301 4th Street, S.W., Washington, D.C. 20547.

Diversity, freedom and democracy guidelines: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy, USIA shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries. Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

Year 2000 compliance requirement (Y2K requirement): The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange with USIA. The inability to process information in accordance with Federal requirements could result in grantees' being required to return funds that have not been accounted for properly.

USIA therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at http://www.itpolicy.gsa.gov.

Review process: USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the USIA Office of East European and NIS Affairs and the USIA post(s) overseas, where appropriate. Eligible proposals will be forwarded to panels of USIA officers for advisory review. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Final funding decisions are at the discretion of USIA's Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA Grants Officer.

Review criteria: Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the program idea: Proposals should exhibit originality, substance, precision, and relevance to the Agency's mission, as well as the objectives of the FLEX program. Program design must reflect an understanding of young people and of cultural traits that would be specific to this population.

2. *Program planning:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview, guidelines, and timing described above.

3. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the organization will meet the program's objective and plan.

4. *Support of diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in selection of speakers, themes, field visits, and resource materials.

5. *Institutional capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

6. *Organization's track record ability:* Proposals should demonstrate a record of successful programs, including responsible fiscal management and full compliance with all requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

7. *Follow-on activities:* Proposals should describe how students will be prepared to transition back to their host communities. There should also be a plan for providing students with tools they can take back to their home countries to implement concepts and ideas they have gained from the workshop.

8. *Project evaluation:* Proposals should include a plan to evaluate the program's success in achieving the stated objectives. USIA recommends that the proposal include a draft survey questionnaire or other technique plus description of a methodology to use in linking outcomes to original project objectives.

9. *Cost-effectiveness:* The overhead and administrative components of the proposals, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Overall per-participant costs will be a factor in the review of the proposal.

10. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions. Organizations that choose to enhance the program by using private funds to increase the number of participants will be viewed more

favorably than those with minimal or no cost sharing.

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through the FREEDOM Support Act of 1992.

Notice: The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification: Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: December 31, 1998.

William B. Bader,

Associate Director for Educational and Cultural Affairs.

[FR Doc. 99–315 Filed 1–6–99; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

USIA-Bosnia and Herzegovina Undergraduate Development Program

NOTICE: Request for proposals.

SUMMARY: Subject to the availability of funds, the Office of Academic Programs, Academic Exchanges Division, European Branch, of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award. Four-year colleges and universities meeting the provisions described in IRS regulation 26 CFR 1.501(c) may apply to host between two and five Bosnian students in a one-year, non-degree undergraduate program for the academic year 1999–2000. Organizations with less than four years of experience in hosting international exchange students are not eligible for this competition. Recruitment and selection will be conducted by USIS Sarajevo.

The USIA Bosnia and Herzegovina Undergraduate Development Program is designed to allow Bosnian students an opportunity to obtain knowledge, insight and cultural enrichment through their academic studies at American colleges and universities. The USIA strongly encourages institutions to guide students to courses in American studies, or other courses which emphasize democracy, market economy, and civic society per the intent of the Support for Eastern European Democracy (SEED) Act funding. The USIA is holding an open competition for four-year universities and colleges giving preference to those with the following strengths:

- Demonstrated experience in hosting Bosnian students, partnerships with Bosnian higher education institutions, or expertise and interest in the region;
- Strong international student advising offices with experience dealing with cultural, educational and adjustment issues for foreign students;
- Accessibility to and opportunities for cultural and social activities;
- Diverse, multi-ethnic student populations.

Increase in program expenses together with reduced overall government funding for exchange programs make cost-sharing arrangements with host institutions a critical part of the USIA Bosnia and Herzegovina Undergraduate Development Program. Preference will be given to institutions that can provide cost-sharing toward tuition, fees, room and board expenses and/or other direct participant expenses. Cost-sharing may also be in the form of direct administrative and program costs.

The proposed funding will support one academic year of study in the fields of agriculture, business administration, civic education, criminal justice, economics, education, environmental resource management, journalism/mass communications, political science, and public administration. The academic-year program will be followed by a four-to-twelve week internship in the students' field of specialization. The program will also include culturally enriching activities, including but not limited to community outreach and service projects, a welcome orientation program at the host institution, a USIA-sponsored mid-year workshop in Washington, DC and a USIA-sponsored end-of-year workshop in Washington, DC.

The funding authority for the USIA Bosnia and Herzegovina Undergraduate Development Program is provided through the Support for East European Democracy (SEED) Act of 1989. The SEED Act targets assistance funds to advance the democratic and economic transition of Central and Eastern Europe. Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

SUPPLEMENTARY INFORMATION:

Overview

The Bosnia and Herzegovina Undergraduate Development Program is a one year education exchange that brings Bosnian students to study at American universities or colleges in specified disciplines pertaining to democracy, market economies, and civil society per the SEED funding initiative.

Guidelines

Programs must comply with J–1 visa regulations and the host institutions are responsible for ensuring the students' return to Bosnia. Please refer to program specific guidelines (POGI) in the Solicitation Package for further details.

Proposed Budget

Institutions desiring to host students from Bosnia must submit a comprehensive line item budget based on the specific guidelines listed in the Solicitation Package. Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as a break-down reflecting both the administrative budget and the program budget. For further clarification, applicants may provide separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title And Number: All communications with USIA concerning the RFP should refer to the announcement's title and reference number *E/AEE–99–06.*

FOR FURTHER INFORMATION, CONTACT: The Office of Academic Programs, European Branch, E/AEE, Room 246 U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547, (202) 205–0525, fax (202) 206–7985, E-Mail: sgovatsk@usia.gov to request a

Solicitation Package containing more detailed information. Please request required application forms, and standard guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

To Download a Solicitation Package via Internet: The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

To Receive a Solicitation Package via Fax on Demand: The entire Solicitation Package may be requested from the Bureau's ''Grants Information Fax on Demand System'' which is accessed by calling 202/401–7616. The ''Table of Contents'' listing available documents and order numbers should be the first order when entering the system.

Deadline for Proposals

All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on Friday, March 5, 1999. Faxed documents will not be accepted at any time. Documents postmarked by the due date but received at a later date will not be accepted. Grants should begin August 1, 1999.

Please specify USIA Program Officer Ms. Sondra Govatski on all inquiries and correspondences. Interested applicants should read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

Submissions: Applicants must follow all instructions in the Solicitation Package. The original and nine (9) copies of the application should be sent to: U.S. Information Agency, Ref. :*E/AEE–99–06,* Office of Grants Management, E/XE, Room 326, 301 4th Street, S.W., Washington, D.C. 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5″ diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to its USIA post in Sarajevo for its review, with the goal of reducing the time it takes to get post's comments for the Agency's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' USIA ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

Year 2000 Compliance Requirement (Y2K Requirement)

The 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange with USIA. The inability to process information in accordance with Federal requirements could result in grantees' being required to return funds that have not been accounted for properly.

USIA therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at http://www.itpolicy.gsa.gov.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the USIA Office of East European and NIS Affairs and its post in Sarajevo. Eligible proposals will be forwarded to panels of USIA officers for advisory review. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Final funding decisions are at the discretion of USIA's Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Strength of Academic Program

Proposals should exhibit academic rigor and demonstrated capacity to meet participant needs.

2. Cost Effectiveness

Plans should indicate a high level of cost-sharing and a competitive level of cost per individual student for the USIA.

3. Academic Support

Capacity to assign a faculty advisor and/or other specific campus coordinator to provide academic guidance, logistical support, and assistance in arranging enrichment activities.

4. International Student Support

Experience working with and providing a full range of support services for international students.

5. Intership Support

Ability to facilitate professional affiliations and internships that will strengthen and reinforce what has been learned in the classroom.

6. Ability To Provide Cultural Enrichment and Community Outreach Opportunities

Proposals should demonstrate a commitment to planning, implementing, and supporting the Bosnian students in participating in cultural, social, and community outreach opportunities.

7. Support of Diversity

Proposals should demonstrate the recipient's commitment to promoting awareness and understanding of diversity.

8. Institution's Record/Ability

Proposals should demonstrate an institutional record of successful exchange programs or a potential to meet this standard. This includes responsible fiscal management and full compliance with all reporting requirements for past Agency grants as

determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

9. Ability for Institutions To Develop or Enhance Linkages With Bosnian Institutions

Proposals should demonstrate how hosting Bosnian students will further strengthen existing programs/activities/linkages of the applicant institution with Bosnia, and provide a plan for developing or enhancing a relationship with Bosnian institutions.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.''

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: December 27, 1998.

William Bader,

Associate Director for Educational and Cultural Affairs.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: December 23, 1998.

Judith Siegel,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 99–189 Filed 1–6–99; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INSTITUTE OF PEACE

Sunshine Act Meeting

AGENCY: United States Institute of Peace.

BILLING CODE: BAC 6820–AR.

DATE/TIME: Thursday, January 21, 1999, 9:00 a.m.–5:30 p.m.

LOCATION: 1200 17th Street, NW, Suite 200, Washington, DC 20036.

STATUS: Open Session—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

AGENDA: January 1999 Board Meeting; Approval of Minutes of the Eighty-seventh Meeting (November 19, 1998) of the Board of Directors; Chairman's Report; President's Report; Committee Reports; Review of Unsolicited Grant Applications; Selection of 2000 Essay Contest Topic; Other General Issues.

CONTACT: Dr. Sheryl Brown, Director, Office of Communications, Telephone: (202) 457–1700.

Dated: January 5, 1999.

Charles E. Nelson,

Vice President for Management and Finance, United States Institute of Peace.

[FR Doc. 99–450 Filed 1–5–99; 3:50 p.m.]

BILLING CODE 6820–AR–M

Federal Register

Thursday
January 7, 1999

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 91, 121, 125, and 135
Crewmember Interference, Portable Electronic Devices, and Other Passenger Related Requirements; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 121, 125, and 135

[Docket No. FAA–1998–4954]

RIN 2120–AG70

Crewmember Interference, Portable Electronic Devices, and Other Passenger Related Requirements

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule, technical amendments.

SUMMARY: This final rule clarifies that certain provisions of the current rules are applicable to passengers and others aboard aircraft. Additionally, the final rule defines the geographic range of some of these requirements. The provisions affected by these amendments concern portable electronic devices, use of safety belts, shoulder harnesses and child restraint systems, prohibition on interference with crewmembers, and certain other provisions. This final rule makes clear that these provisions apply as follows: to all aircraft, unless otherwise specified, when those aircraft are operating within the U.S. or within the airspace over the waters extending 12 nautical miles from the U.S. coastline; and on all U.S. registered aircraft operating outside of the U.S., so long as the application of these rules is not inconsistent with applicable regulations of the foreign country where the aircraft is operated or annex 2 of the Convention on International Civil Aviation. A provision also is being added to part 125 that indicates that this part applies to persons on board aircraft. The FAA is extending the application of the prohibition on interference with crewmembers to all civil aircraft flights that depart from or land in the U.S., regardless of whether such aircraft are registered in the U.S. This is consistent with criminal law provisions concerning the ''special aircraft jurisdiction of the U.S.''

Additionally, provisions are being added to parts 121 (Operating Requirements: Domestic, Flag and Supplemental Operations), 125 (Certification and Operations: Airplanes Having a Seating Capacity of 20 or More Passengers or a Maximum Payload Capacity of 6,000 pounds or More) and 135 (Operating Requirements: Commuter and On-Demand Operations) that mirror sections 91.11 and 91.21.

EFFECTIVE DATE: January 7, 1999.

FOR FURTHER INFORMATION CONTACT: Carol Toth, Attorney Advisor, Office of the Chief Counsel, AGC–220, Federal Aviation Administration, 800 Independence Ave. S.W., Washington, D.C. 20591, 202–267–3073, or [AFS or ACS contact].

SUPPLEMENTARY INFORMATION:

Availability

Using a modem and suitable communications software, an electronic copy of this document may be downloaded from the FAA regulations section of the FEDWORLD electronic bulletin board service (telephone: 703–321–3339) the Federal Register's electronic bulletin board service (Telephone: 202–512–1661), or the FAA's Aviation Rulemaking Advisory Committee (ARAC) bulletin board service (telephone: 800–322–2722 or 202–267–5948).

Internet use may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the **Federal Register** webpage at http://www.access.gpo.gov/su__docs/acess/aces140.html for access to recently published rulemaking documents.

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Ave., SW, Washington, DC 20591 or by calling 202–267–9680. Communications must identify the amendment number or docket number of this final rule. Persons interested in being placed on the mailing list for future Notices of Proposed Rulemaking (NPRMs) and Final Rules should request from the above office a copy of Advisory Circular No. 11–2A NPRM Distribution System, that describes the application procedures.

Justification for Proceeding Without Notice and Comment

The FAA is issuing this final rule without notice and opportunity to comment pursuant to its authority under Section 4(a) of the Administrative Procedure Act, 5 U.S.C. 553(b). This provision allows the FAA to issue a final rule without notice and comment when the agency for good cause finds that notice and public procedure are ''impracticable, unnecessary or contrary to the public interest.'' The FAA finds that issuance of this Final Rule does not require notice and comment because it is unnecessary given that the FAA's regulatory history surrounding the adoption of the existing provisions, and in some instances the provision itself, indicate that these sections were intended to apply to passengers. Therefore, the clarifications provided in this final rule regarding the applicability of the rules to passengers and others aboard aircraft are minor technical corrections that do not substantively change the impact of the regulation and merely clarify prior agency position.

As to the application of these rules to U.S. registered aircraft operating at a distance greater than 12 nautical miles from the U.S. coast, prior notice and comment procedures are unnecessary inasmuch as the FAA always intended these rules to apply on U.S. registered aircraft, even those operating outside U.S. airspace. An error in the 1989 reorganization of part 91, however, inadvertently limited these rules to operations within the U.S. and within 12 nautical miles of the U.S. coast. Delaying the implementation of this final rule would be contrary to the public interest in that it would hinder the agency's efforts to ensure a safe flying environment for both the public and air carrier employees.

As to the application of the rule pertaining to the prohibition on interference with crewmembers on a non-U.S. registered aircraft that has a geographic nexus with the U.S., prior notice and comment procedures are unnecessary inasmuch as Congress has already criminalized such conduct and the exercise of this jurisdiction comports with the obligations of the U.S. under international law. Violations of the FAA's prohibition could only result in the imposition of a civil penalty, whereas the same conduct would be a violation of U.S. criminal law and subject the offender to criminal penalties including fines and/or imprisonment pursuant to 49 U.S.C. 46504. Delaying the implementation of this final rule would be contrary to the public interest in that it would hinder the FAA's efforts to bring the civil safety regulations into harmony with U.S. criminal law and hinder the FAA's effort to ensure a safe flying environment to and from the U.S.

Part 91

Discussion of the Amendment [Applicability to Passengers and Others Aboard Aircraft]

The amendments to this part clarify that the following provisions are applicable to passengers: § 91.11 (Prohibition against interference with crewmembers); § 91.21 (Portable electronic devices); § 91.107(3) (Use of safety belts, shoulder harnesses and child restraint systems); and § 91.517(c) and (d) (Passenger information).

This amendment is necessary because it has recently been brought to the FAA's attention that there is some confusion as to the applicability of the

passenger specific provisions in part 91 because of the way the applicability provision of § 91.1 was drafted.

The applicability provision of § 91.1(a) applies to the ''operation of aircraft * * * within the United States, including the waters within 3 nautical miles of the U.S. coast.'' The term ''operation of aircraft'' is statutorily defined as follows:

Using aircraft for the purposes of air navigation, including—

(A) The navigation of aircraft; and

(B) Causing or authorizing the operation of aircraft with or without the right of legal control of the aircraft. (49 U.S.C. § 40102(32))

Thus, part 91 covers the operation of all aircraft not otherwise excepted, including foreign aircraft, in the airspace over the U.S. or within the airspace over the waters within 3 nautical miles of the U.S. coast. Section 91.1(b) specifically applies part 91 to ''[e]ach person operating an aircraft in the airspace overlying the waters between 3 and 12 nautical miles from the coast of the United States.'' Unlike parts 121 and 135 which contain applicability provisions that specifically make those parts apply to each person on board an aircraft (see §§ 121.1(e) and 135.1(a)(6)), there is no provision in § 91.1 that specifically states that part 91 is also applicable to all individuals on board an aircraft operated under part 91.

A similar problem also has been identified in Subpart H to part 91 (§§ 91.701–91.715), Foreign Aircraft Operations and Operations of U.S. Registered Civil Aircraft Outside of the U.S. Section 91.701 states that this ''subpart applies to the operations of civil aircraft of U.S. registry outside of the United States and the operations of foreign civil aircraft within the United States''. Section 91.703(a)(3) provides that, with a few exceptions, ''each person operating a civil aircraft of U.S. registry outside of the U.S. shall * * * comply with this part [part 91] so far as it is not inconsistent with applicable regulations of the foreign country where the aircraft is operated or annex 2 of the Convention on International Civil Aviation.'' Subpart H does not contain a provision that specifically indicates that persons on board an aircraft of U.S. registry operating outside of the United States or persons on board foreign aircraft operating within the U.S. are governed by the requirements of §§ 91.11, 91.21, 91.107(a)(3) and 91.517.

As discussed below, both the regulatory history surrounding the adoption of the provisions together with the original language of the provisions before the reorganization of part 91 in 1989 indicate that these provisions were intended to apply to each person on board an aircraft (e.g., passengers), and in fact have been so applied since the adoption of these provisions.

Historical Overview

According to the regulatory history, both §§ 91.11 and 91.21 were clearly intended to apply to passengers upon adoption of the regulations, as well as to crewmembers and any other ''person'' on board the aircraft. The special regulation (SR 448A) that was the precursor to § 91.11 indicated that the regulation was necessary to ''provide additional controls over the conduct of passengers in order to avoid a serious threat to the safety of flights and persons aboard them,'' 26 FR 7009 (July 28. 1961) amended by 26 FR 9669 (October 13, 1961), Likewise the special regulation that preceded § 91.21 was adopted because of the concern that passengers might carry onto an aircraft certain types of portable radio receivers that could possibly interfere with navigation and communications equipment. See SR 446B, 28 FR 3648 (April 13, 1963).

Section 91.107(3) specifically applies to ''each person on board a U.S. registered civil aircraft.'' This section requires each person to occupy an approved seat or berth with a safety belt and, if installed, shoulder harness properly secured about him or her during movement on the surface, takeoff and landing. In the final rule adopting this provision, the FAA indicated that one of the purposes for the rule was to rectify the fact that ''in some circumstances certain parts of the FAR do not require passenger compliance with these lighted passenger information signs, posted signs and placards and crewmember safety-related instructions.'' See 57 FR 42662, 42669 (September 15, 1992).

Section 91.517(c) and (d) also specifically apply to persons on board U.S. registered aircraft. The applicability of this section is obvious given the title and the fact that the word ''passenger'' is used in the language of the provision. Specifically, the provision requires ''passengers'' to adhere to ''no smoking'' signs, ''fasten seat belt'' signs and abide by other instructions provided by the crew.

The FAA previously has stated that the provisions of part 91 governing crew interference and radio interference are applicable to civil aircraft of U.S. registry operated inside and outside U.S. navigable airspace so long as they are not inconsistent with applicable regulations of any foreign country or annex 2 to the Convention on International Civil Aviation. See FR 19096 (December 30, 1964). All of the requirements of part 91 were made applicable to civil aircraft of U.S. registry operating outside the U.S. pursuant to a final rule issued June 15, 1966. See 31 FR 8354.

In 1989, the FAA reorganized part 91 pursuant to the final rule issued August 18, 1989 (54 FR 34284). In that final rule, the FAA divided the pre-1989 § 91.1 so that all applicability provisions relating to foreign operations were moved to § 91.703. Section 91.1(b) was initially added in 1988 to clearly extend the controlled airspace of the United States in accordance with international law. See 54 FR 265 (January 4, 1989); Territorial Sea of the United States of America, Presidential Proclamation No. 5928 of Dec. 27, 1988. In the 1989 reorganization of part 91, the FAA did not intend any substantive changes to the geographic applicability of those part 91 provisions, nor was any intent expressed to modify the FAA's past position that part 91 applies to passengers in certain instances as well.

Purpose of the ''Unless Otherwise Specified'' Language in Section 91.1(c)

Section 91.1(c) is designed to clarify that part 91 also applies to each person aboard an aircraft operated under this part. The ''unless otherwise specified'' language refers to the fact that certain part 91 provisions (e.g., §§ 91.21, 91.107(a)(3) and 91.517) are limited by their terms to persons on board U.S. registered aircraft. Therefore, these provisions would not cover persons on board foreign registered aircraft operating in U.S. airspace. Additionally, the ''unless otherwise specified'' language also is used because most of the rules in Part 91 are directed toward aircraft operators or owners, not to persons aboard aircraft.

Discussion of the Amendment [Applicability of Part 91 Outside U.S. Airspace]

The amendment in subpart H to part 91 is designed to extend the applicability of Section 91.11 to all aircraft (including foreign registered aircraft) having a specified nexus with the U.S. Congress established the ''special aircraft jurisdiction of the U.S.'' to impose criminal penalties in the event an individual interferes with flight crewmembers or attendants while an aircraft is in flight. The term ''special aircraft jurisdiction of the U.S.'' is defined under 49 U.S.C. 46501(2) as any of the following aircraft in flight:

(A) A civil aircraft of the United States:

* * * * *

(C) Another aircraft in the United States;

(D) Another aircraft outside the United States—

(i) That has its next scheduled destination or last place of departure in the United States, if the aircraft next lands in the United States;

(ii) On which an individual commits an offense (as defined in the Convention for the Suppression of Unlawful Seizure of Aircraft) if the aircraft lands in the U.S. with the individual still on the aircraft; or

(iii) Against which an individual commits an offense (as defined in subsection (d) or (e) of article I, section I of the convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation) if the aircraft lands in the United States with the individual still on the aircraft.

(E) Any other aircraft leased without crew to a lessee whose principal place of business is in the United States or, if the lessee does not have a principal place of business, whose permanent residence is in the United States.

The FAA already has civil penalty regulations that apply § 91.11 to the scenarios presented in paragraphs (A) and (C) above. Consistent with the criminal jurisdiction of the U.S., the FAA is extending § 91.11 to provide for civil penalties applicable to persons who violate this provision while on board aircraft operating within the special aircraft jurisdiction of the U.S. as described in (D) and (E). The FAA finds that good cause exists to extend the § 91.11 provision to the situations specified in (D) and (E) above without notice and comment procedures in-as-much as criminal penalties already exist for such conduct in the special aircraft jurisdiction of the U.S. Moreover, there is compelling public interest in enhancing the safety of such operations by the deterrent effects of having civil penalty authority for such conduct. This is consistent with the obligations of the U.S. and most other nations under international law. See Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, September 23, 1971, 24 U.S.T. 564; and Convention for the Suppression of Unlawful Seizure of Aircraft, December 16, 1970, 22 U.S.T. 1641. Additionally, in conformance with international law, the extension of 91.11 will cover operations conducted by U.S. air carriers on non-U.S. registered aircraft wholly outside the U.S. The signatories to the above treaties encourage states to assert jurisdiction and impose severe penalties for, among other things, threatening or performing an act of violence against a person on board an aircraft that will endanger the aircraft.

Parts 121, 125 and 135

Section 119.1(c) provides that ''[p]ersons subject to this part [119] must comply with the other requirements of this chapter [Chapter 1], except where those requirements are modified by or where additional requirements are imposed by part 119, 121, 125, or 135 of this chapter.'' Since there are no requirements in parts 119, 121, 125 or 135 that modify the provisions of §§ 91.11 and 91.21, the provisions of §§ 91.11 and 91.21 also apply to those persons subject to part 119. Part 119 applies to those persons acting like direct air carriers or other commercial operators, as specified in § 119.1(a). Passengers and other people who are not acting like air carriers and other commercial operators are not subject to part 119 and thus are not subject to the § 119.1(c) provision that incorporates the other requirements of Chapter 1 of Title 14 of the CFR. The agency's longstanding position has been that both of these part 91 provisions would apply to passengers and others aboard aircraft being operated under parts 121, 125 and 135. Therefore, the addition of provisions similar to § 91.11 and 91.21 into parts 121, 125 and 135 is a clarifying change, where notice and comment procedures are not necessary. Those part 121, 125 and 125 provisions are: 121.306, 121.580, 125.204, 125.328, 135.120 and 135.144. The FAA merely intends these amendments as clarifying the rights, duties and obligations of all persons on board an aircraft.

Both parts 121 and 135 have a section that indicates that the respective part applies to each person on board the aircraft. See §§ 121.1(e) and 135.1(a)(6). Part 125 does not contain such a reference. Therefore, the FAA is amending part 125 to adopt a provision (section 125.1(d)) that specifies that this part applies to each person on board the aircraft.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the FAA to report inquiries from small entities concerning information on, and advice about, compliance with statutes and regulations within the FAA's jurisdiction, including interpretation and application of the law to specific sets of facts supplied by a small entity.

If you are a small entity and have a question, contact your local FAA official. If you do not know how to contact your local FAA official, you may contact Charlene Brown, Program Analyst Staff, Office of Rulemaking, ARM–27, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 1–888–551–1594. Internet users can find additional information on SBREFA in the ''Quick Jump'' section of the FAA's web page at http://www.faa.gov and may send electronic inquiries to the following Internet address: *9–AWA–SBREFA@faa.dot.gov*.

Agency Findings

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. This rule will not have any economic costs on any covered persons. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA has determined that the expected impact is minimal since there is no economic impact, therefore the final rule does not warrant a full regulatory evaluation.

Paperwork Reduction Act

In accordance with the Paperwork Reduction of 1995 (44 U.S.C. 3507(d)), there are no requirements for information collection associated with this proposed rule.

International Compatibility

The FAA has determined that a review of the Convention on International Civil Aviation Standards and Recommended Practices is not warranted because there is not a comparable rule under ICAO standards.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business organizations, and governmental jurisdictions subject to regulation.'' To achieve that principal, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is made that it will the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) for the 1980 Act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination and the reasoning should be clear.

The FAA conducted the required review of this proposal and determined that it would not have a significant economic impact on a substantial number of small entities. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Statement

The rule will not constitute a barrier to international trade, including the export of U.S. goods and services to foreign countries and the import of foreign goods and services into the United States.

Federalism Implications

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13083, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon state, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other thing, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rule does not contain a Federal intergovernmental or private sector mandate that exceeds $100 million a year.

List of Subjects

14 CFR Part 91

Aircraft, airmen, aviation safety, reporting and recordkeeping requirements.

14 CFR Part 121

Aircraft, air carrier, airmen, aviation safety, safety.

14 CFR Part 125

Aircraft, airmen, aviation safety, reporting and recordkeeping requirements.

14 CFR Part 135

Air, airmen, aviation safety.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends parts 91, 121, 125, and 135 of title 14, Code of Federal Regulations as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180).

2. Section 91.1 is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 91.1 Applicability

(a) Except as provided in paragraphs (b) and (c) of this section and §§ 91.701 and 91.703, this part prescribes rules governing the operation of aircraft (other than moored balloons, kites, unmanned rockets, and unmanned free balloons, which are governed by part 101 of this chapter, and ultralight vehicles operated in accordance with part 103 of this chapter) within the United States, including the waters within 3 nautical miles of the U.S. coast.

* * * * *

(c) This part applies to each person on board an aircraft being operated under this part, unless otherwise specified.

3. Section 91.11 is amended by revising the section heading to read as follows:

§ 91.11 prohibition on interference with crewmembers.

4. The heading for Subpart H is revised to read as follows:

Subpart H—Foreign Aircraft Operations and Operations of U.S. Registered Civil Aircraft Outside of the United States; and Rules Governing Persons on Board Such Aircraft

5. Section 91.701 is revised to read as follows:

§ 91.701 Applicability.

(a) This subpart applies to the operations of civil aircraft of U.S. registry outside of the United States and the operations of foreign civil aircraft within the United States.

(b) Section 91.702 of this subpart also applies to each person on board an aircraft operated as follows:

(1) A U.S. registered civil aircraft operated outside the United States;

(2) Any aircraft operated outside the United States—

(i) That has its next scheduled destination or last place of departure in the United States if the aircraft next lands in the United States; or

(ii) If the aircraft lands in the United States with the individual still on the aircraft regardless of whether it was a scheduled or otherwise planned landing site.

6. A new § 91.702 is added to read as follows:

§ 91.702 Persons on board.

Section 91.11 of this part (Prohibitions on interference with crewmembers) applies to each person on board an aircraft.

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG AND SUPPLEMENTAL OPERATIONS

7. 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.

8. A new § 121.306 is added to read as follows:

§ 121.306 Portable electronic devices.

(a) Except as provided in paragraph (b) of this section, no person may operate, nor may any operator or pilot in command of an aircraft allow the operation of, any portable electronic device on any U.S.-registered civil aircraft operating under this part.

(b) Paragraph (a) of this section does not apply to—

(1) Portable voice recorders;

(2) Hearing aids;

(3) Heart pacemakers;

(4) Electric shavers; or

(5) Any other portable electronic device that the part 119 certificate holder has determined will not cause interference with the navigation or communication system of the aircraft on which it is to be used.

(c) The determination required by paragraph (b)(5) of this section shall be made by that part 119 certificate holder operating the particular device to be used.

9. A new § 121.580 is added to read as follows:

§ 121.580 Prohibition on interference with crewmembers.

No person may assault, threaten, intimidate, or interfere with a crewmember in the performance of the crewmember's duties aboard an aircraft being operated under this part.

10. The heading for part 125 is revised to read as follows:

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE; AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

11. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44710–44711, 44716, 44717, 44722.

12. Section 125.1 is amended by revising paragraph (a) and adding paragraph (d) to read as follows:

§ 125.1 Applicability.

(a) Except as provided in paragraphs (b), (c) and (d) of this section, this part prescribes rules governing the operations of U.S.-registered civil airplanes which have a seating configuration of 20 or more passengers or a maximum payload capacity of 6,000 pounds or more when common carriage is not involved.

* * * * *

(d) The provisions of this part apply to each person on board an aircraft being operated under this part, unless otherwise specified.

13. A new § 125.204 is added to read as follows:

§ 125.204 Portable electronic devices.

(a) Except as provided in paragraph (b) of this section, no person may operate, nor may any operator or pilot in command of an aircraft allow the operation of, any portable electronic device on any U.S.-registered civil aircraft operating under this part.

(b) Paragraph (a) of this section does not apply to—

(1) Portable voice recorders;

(2) Hearing aids;

(3) Heart pacemakers;

(4) Electric shavers; or

(5) Any other portable electronic device that the Part 125 certificate holder has determined will not cause interference with the navigation or communication system of the aircraft on which it is to be used.

(c) The determination required by paragraph (b)(5) of this section shall be made by that Part 125 certificate holder operating the particular device to be used.

14. A new § 125.328 is added to read as follows:

§ 125.328 Prohibition on crew interference.

No person may assault, threaten, intimidate, or interfere with a crewmember in the performance of the crewmember's duties aboard an aircraft being operated under this part.

15. The heading for part 135 is revised to read as follows:

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

16. The authority citation continues to read as follows: 49 U.S.C. 106(g), 44113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

17. A new § 135.120 is added to read as follows:

§ 135.120 Prohibition on interference with crewmembers.

No person may assault, threaten, intimidate, or interfere with a crewmember in the performance of the crewmember's duties aboard an aircraft being operated under this part.

18. A new § 135.144 is added to read as follows:

§ 135.144 Portable electronic devices.

(a) Except as provided in paragraph (b) of this section, no person may operate, nor may any operator or pilot in command of an aircraft allow the operation of, any portable electronic device on any of the following U.S.-registered civil aircraft operating under this part.

(b) Paragraph (a) of this section does not apply to—

(1) Portable voice recorders;

(2) Hearing aids;

(3) Heart pacemakers;

(4) Electric shavers; or

(5) Any other portable electronic device that the part 119 certificate holder has determined will not cause interference with the navigation or communication system of the aircraft on which it is to be used.

(c). The determination required by paragraph (b)(5) of this section shall be made by that part 119 certificate holder operating the aircraft on which the particular device is to be used.

Issued in Washington, DC on December 29, 1998.

Jane F. Garvey,

Administrator.

[FR Doc. 99–58 Filed 1–6–99; 8:45 am]

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Federal Register

Thursday
January 7, 1999

Part III

Department of Justice

Federal Prison Industries

28 CFR Part 302

Federal Prison Industries, Inc. (FPI); Standards and Procedures That Facilitate FPI's Ability To Accomplish Its Mission; Proposed Rule

DEPARTMENT OF JUSTICE

Federal Prison Industries, Inc.

28 CFR Part 302

[BOP 1081–P]

RIN 1120–AA84

Federal Prison Industries, Inc. (FPI) Standards and Procedures That Facilitate FPI's Ability To Accomplish Its Mission

AGENCY: Federal Prison Industries, Inc., Justice.

ACTION: Proposed rule.

SUMMARY: This document proposes to codify Federal Prison Industries, Inc. (FPI)'s standards and procedures that facilitate FPI's ability to accomplish its mission. The publication of these procedures marks the culmination of a process that began several years ago in efforts to clarify certain provisions of FPI's statute, 18 U.S.C. 4121 *et seq.* It represents a continuing effort to make the use of FPI as a provider of goods and services to the Government as simple and efficient as possible. The document's provisions include: purpose and scope; definitions; a mission statement; roles and responsibilities of FPI's Board of Directors, Chief Executive Officer, Chief Operating Officer, and the Ombudsman; agency meeting procedures; inmate employment levels; provision of products as a mandatory source; provision of products as a non-mandatory source; provision of services to the commercial market; provision of products and services as a preferential source; waiver and appeal procedures; pricing; and new product development or expansion. FPI is codifying these procedures in order to clarify its procedures and to foster its relationship with its customers and suppliers by providing for public review and comment.

DATES: Comments due by March 8, 1999.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Marianne S. Cantwell, Corporate Counsel, Federal Prison Industries, Inc., phone (202) 305–3501.

SUPPLEMENTARY INFORMATION:

Background

1. Why Is FPI Promulgating This Rule?

Federal Prison Industries, Inc. (FPI) is proposing to issue this rule to codify its standards and procedures that facilitate FPI's ability to accomplish its mission. FPI is promulgating this rule as a proactive measure in order to clarify its standards and procedures. It represents a continuing effort to make the use of FPI as a provider of goods and services to the Government as simple and efficient as possible. The rules are descriptive of the functions of FPI's Board and other managing officials, and are descriptive of existing standards and procedures utilized to accomplish FPI's mission.

2. What Is FPI's Mission?

The United States Congress created FPI in 1934, just four years after the creation of the Federal Prison System. The Congress immediately recognized the need for constructive work programs in the nation's prisons both to occupy inmates' time and train them to be productive citizens. FPI's mandate has remained the same since its creation: to train and employ the greatest number of inmates possible in a self-supporting manner. FPI is the most important correctional management program of the Federal Bureau of Prisons to relieve inmate idleness and to ensure the orderly operation of Federal prisons. FPI provides inmates with valuable training opportunities, teaches a work ethic, and prepares inmates for reintegration into the community.

FPI is statutorily required (see 18 U.S.C. 4122(a)) to: provide employment for the greatest number of those inmates in the United States penal and correctional institutions who are eligible to work as is reasonably possible; diversify, so far as practicable, prison industrial operations; operate the prison shops so that no single private industry shall be forced to bear an undue burden of competition from the products of the prison workshops; and to reduce, to a minimum, competition with private industry or free labor.

3. How Does This Rule Affect Previous FPI Guidelines Published in the Federal Register?

In accordance with its statutory authority to announce in a publication designed to most effectively provide notice to potentially affected private vendors the plans to produce any new product or significantly expand production of an existing product, FPI previously published notices in the *Commerce Business Daily*. Revised guidelines for new product development were published in the **Federal Register** on August 7, 1996 (61 FR 41248) for notice and comment and were issued in a notice document on March 12, 1997 (62 FR 11465). These guidelines are now being incorporated into FPI's proposed standards and procedures.

Executive Order 12866

The rule has been considered to constitute a ''significant regulatory action'' under section 3(f) of Executive Order 12866, and, accordingly, the Office of Management and Budget has reviewed the proposed rule.

Executive Order 12612

This rule will not have a substantial direct effect 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 has been determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Chief Executive Officer, FPI, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b), has reviewed this rule and by approving it certifies that this rule will not have a significant impact on a substantial number of small entities within the meaning of the Act. The principal effect of these rules is that they will improve the ability of FPI to serve its customers and will help FPI's Board of Directors to comply with its statutory mandate of assuring that no single industry is unduly impacted by FPI's operations.

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 $100,000,000 or more in any one 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 section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. The promulgation of this rule will not result in an annual effect on the economy of $100,000,000 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 companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

We try to write clearly. If you have a suggestion on how to improve the clarity of this rule, please call or write: Roy Nanovic, Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW, HOLC Room 754, Washington, DC 20534; phone (202) 514–6655.

Comments on Rule

Interested persons may participate in this proposed rulemaking by submitting data, views, or comments in writing to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW, HOLC Room 754, Washington, DC 20534. Comments received during the comment period will be considered before final action is taken. Comments received after the expiration of the comment period will be considered to the extent practicable. All comments received remain on file for public inspection at the above address. The proposed rule may be changed in light of the comments received. No oral hearings are contemplated.

List of Subjects in 28 CFR Part 302

Prisoners.

Accordingly, pursuant to the order of FPI's Board of Directors, part 302 in chapter III of 28 CFR is proposed to be revised as set forth below.

Steve Schwalb,

Acting Chief Executive Officer, Federal Prison Industries, Inc.

PART 302—FEDERAL PRISON INDUSTRIES, INC. (FPI) STANDARDS AND PROCEDURES THAT FACILITATE FPI'S ABILITY TO ACCOMPLISH ITS MISSION

Sec.

302.1 Purpose and scope.
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302.12 Preferential source.
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302.15 Appeals to waiver denials.
302.16 Pricing.
302.17 Industry involvement guidelines procedures.
302.18 Definitions and application of significant terms in product development guidelines process.
302.19 General comments on FPI business operations.

Authority: 18 U.S.C. 4122 and 4124, and by resolution of the Board of Directors of FPI.

§ 302.1 Purpose and scope.

It is the mission of FPI (also referred to as ''the Corporation''), a wholly owned government corporation, to employ and provide skills training to the greatest practicable number of inmates in Federal correctional facilities necessary to ensure the safe and secure operation of such institutions, and in doing so, to produce market priced, quality goods in a self-sustaining manner that minimizes, to the extent feasible, potential impact on private business.

§ 302.2 Definitions.

(a) *Assembled* refers to the process of uniting or combining articles or components, so as to add value by producing a change in form or utility.

(b) *Contracting office* means any element of an entity of the Government that has responsibility for identifying and/or procuring Federal Government requirements for commodities or services. It includes the contracting officer and members of all offices within the definitions of ''contracting activity,'' ''contracting office,'' and ''contract administration office'' contained in the Federal Acquisition Regulation, 48 CFR 2.101.

(c) *Departments or agencies of the United States* means any entity of the Executive Branch, including military departments, government corporations, independent agencies, and appropriated or non-appropriated fund entities of the United States Government. The terms Federal departments and agencies, departments and agencies of the United States, Government departments and agencies, departments, and agencies are used interchangeably.

(d) *Inmate product* refers to products that are manufactured and/or assembled in whole or in part by prisoners. Inmate products may include component parts of such products, or items ancillary to such products, obtained from a commercial source, which are either physically attached, or not physically attached, to the end product. In determining whether such component parts or ancillary items are inmate products that may be supplied to the customer by prison industries, consideration will be given to such matters as the following: How closely is the item linked by utility to the basic product? Would separate purchase of the item by the customer involve significant inconvenience, delay, and/or expense to the customer? Would refusal to supply the item result in justifiable waiver requests which could cause inmate idleness? Are such items routinely provided by commercial suppliers in connection with sale of the end product? Is the item relatively minor in relation to the end product?

(e) *Manufactured* refers to the process of fabricating products from raw or prepared materials, so as to impart new forms, qualities, properties, and combinations.

(f) *Schedule of Products* means the list of commodities and services offered by FPI to its customers for which FPI is a mandatory or preferred source.

(g) *Services* refers to both economic activity that is rendered in such a way that it does not culminate in a tangible product (e.g., laundry and administrative support services) and economic activity that does culminate in tangible products, especially when the services aspect of the operation is not ordinarily viewed as involving a manufacturing process. If the activity is sufficiently transformative, it will be viewed as manufacturing in nature and therefore a product rather than service. For example, repair work will ordinarily be considered a service, because in most instances, the operation does not transform the object into a new object, but involves restoration of the object to a prior condition and return to the original owner. For this reason, furniture refinishing is also ordinarily considered a service. However, when the operation performed is sufficiently transformative so as to result in a new item, it is no longer viewed as a service, but a product. Assembly, such as packaging of various items in bags or cartons, is considered a service. But assembly involving cut and sew operations, which produce a radically different end product from components through employment of manufacturing techniques, are considered products and not services. Examples of services currently provided by FPI include: data conversion; optical scanning; engine accessories repair and rebuilding; forklift repair and rebuilding; kit assembly; radio carrier modification; cable/electrical parts refurbishing; vehicular components repair and rebuilding; furniture repair; bag repair; equipment assembly; mail distribution; printing and data entry.

(h) The words *products*, *supplies* and *commodities* are used interchangeably.

(I) *UNICOR* is the trade name for Federal Prison Industries, Inc. (FPI). The term UNICOR is used interchangeably with FPI.

§ 302.3 Board of Directors: roles and responsibilities.

(a) FPI's Board of Directors consists of six directors appointed by the President of the United States, pursuant to 18 U.S.C. 4121. The Board determines in what manner and to what extent industrial operations shall be carried on in Federal correctional institutions, consistent with the statutory responsibilities created in Chapter 307 of title 18 United States Code.

(b) In addition, the Board has the following general responsibilities:

(1) Amend FPI's bylaws as needed;

(2) Review and approve general policies and long range corporate plans, including the annual operating plan and strategic plans;

(3) Review and approve capital investments in excess of $500,000;

(4) Assure that the Corporation remains liquid, that its assets are properly valued and maintained, and that adequate reserves are established for this purpose;

(5) Assure that there is a fair and adequate means for review of the impact of FPI on the private sector;

(6) Hold meetings with the independent auditors regarding preparation and completion of the annual audit of the Corporation's financial performance, at which the Board will review the Corporate response to the auditor's Management Letter and provide comments to this response to the Department of Justice Inspector General;

(7) Hold periodic reviews of finances to include sales, earnings, and operating cash as measured against expected objectives;

(8) Meet routinely with the Ombudsman to receive reports of concerns or complaints from the public of FPI's impact, and other observations and suggestions;

(9) Establish inmate employment levels, consistent with Bureau of Prisons' needs and FPI's mission and mandates.

§ 302.4 Chief Executive Officer: roles and responsibilities.

The Chief Executive Officer of FPI, who is also the Director of the Bureau of Prisons (BOP), is responsible for carrying out the duties and responsibilities of the Corporation, including but not limited to:

(a) Making management decisions not delegated to the Chief Operating Officer;

(b) Assuring that orders and resolutions of the Board are implemented;

(c) Assuring that full and accurate accounts of receipts and disbursements in books belonging to the Corporation are maintained, as well as other transactions of the Corporation, so that the proper and correct financial condition of the Corporation can be ascertained at any time.

§ 302.5 Chief Operating Officer: roles and responsibilities.

The Chief Operating Officer of FPI, who is also an Assistant Director of the BOP, is responsible for the day to day management of the affairs of the Corporation, so as to carry out the responsibilities of the Corporation, and to perform all duties and make all decisions, except where authority has been retained by the Board of Directors or the Chief Executive Officer. The Chief Operating Officer may re-delegate authority as deemed appropriate.

§ 302.6 Ombudsman.

(a) The position of Ombudsman was established by the Board of Directors to achieve improved relations with the private sector, to provide a mechanism for resolving customer issues, and to provide the Board with information in addition to that provided by the normal corporate chain of command. The Ombudsman reports directly to both the Chief Operating Officer and the Board of Directors. In addition, the Ombudsman meets with and provides reports to the Board of Directors.

(b) In order to assist with dispute resolution prior to any request for review pursuant to 18 U.S.C. 4124(b), the Board has established a waiver appeal process, and has vested the Ombudsman with independent authority to make decisions concerning issues arising in conjunction with the mandatory source waiver appeal process, and to make recommendations to the Chief Operating Officer concerning vendor and other customer issues.

§ 302.7 Meetings.

The Board will hold at least one regularly scheduled meeting each year in either Washington, DC, or at a location in proximity to one of the Federal prisons, and such additional or special meetings as it deems appropriate. Meetings may be held in person or through electronic means. Time will be set aside for the Board to meet in executive session at each meeting, if the directors so desire. In addition to these meetings, the Board may schedule periodic teleconferences to review the monthly financial reports and other matters.

§ 302.8 Inmate employment levels.

(a) Inmate employment levels in FPI will be commensurate with the needs of the BOP, and the mission and mandates of FPI. Considerations shall include the interests of the public, including industry and labor. As the nature and size of the inmate population change, the need of the BOP for industrial jobs may also change. Thus, an annual assessment will be performed of the number and types of jobs necessary to fill the BOP's needs in such a way that FPI's mandates are also fulfilled. This assessment will take into account the fact that FPI has multiple missions, as set forth in its enabling statute and Executive Order. Two of the most important missions are the following: inmate employment must be maximized to combat idleness, to the extent consistent with the need to protect industry and free labor from undue impact; and, best efforts should be made so that the jobs that are created enhance inmate work habits and skills, so as to increase the probability that inmates will be able to succeed in the community upon release.

(b) It is the primary responsibility of both the Chief Executive Officer, and the Chief Operating Officer of FPI, working together, to determine the optimal mix of BOP and FPI jobs. It is the responsibility of the Board to assure that employment levels are consistent with FPI's mission and mandates and do not unduly impact the private sector.

§ 302.9 Mandatory source.

(a) By federal law, FPI is the mandatory source of products for all Federal departments, agencies, and all other Government institutions of the United States, provided that these products are available and meet the agency's requirements as set forth in this section. See, however, §§ 302.10 and 302.12(a).

(b) As a Government agency with a statutory mandate to provide employment for the greatest number of those inmates as is reasonably possible (18 U.S.C. 4122(b)(1)), FPI operates with a mandatory procurement preference granted by Congress (18 U.S.C. 4124(a)). Also, purchases from FPI are an exception to the rules that normally govern the way goods are procured by the United States because FPI's ''sales'' to other Government agencies actually constitute intergovernmental transfers of goods, rather than traditional sales. Therefore, purchases from FPI are not subject to the Federal Acquisition Regulation (FAR) provisions governing procurement from the private sector. See Memorandum from Walter Dellinger, Acting Assistant Attorney General, Office of Legal Counsel (OLC) (Sept. 13, 1993). Thus, FPI need not abide by FAR provisions in its agreements with its customers in order

to remain a mandatory source for its products. However, in its discretion, FPI may include these terms in its agreements at the request of its customers.

(c) FPI is the mandatory source for all products on its Schedule of Products (''Schedule''). The Schedule is a general, though not an exhaustive, list of all the categories of products and services available to departments and agencies from FPI. Since it does not contain all permutations of options and features available for each product, it may not always be clear whether a particular product offered by FPI has the necessary features desired by a Federal customer. In case of doubt, the contracting officer or activity should contact FPI, and FPI will determine whether a particular product is included in the Schedule and whether an agency's requirement can be met by FPI. Copies of the Schedule are available from the FPI Customer Service Center at Lexington, Kentucky (1–800–827–3168); FPI's Washington, DC headquarters; from the customer's sales representative, or through the Internet at http://www.unicor.gov.

(d) A contracting activity should not solicit bids, proposals, quotations, or otherwise test the market for the purpose of seeking alternative sources to FPI. Thus, proposals should not be sought where FPI is the presumptive provider (i.e., where the product is listed in FPI's Schedule of Products) and a waiver has not been granted. Both the language and the purpose of FPI's statute are inconsistent with the idea that FPI, itself a part of the Government, shall enter into competition with private manufacturers in bidding for the business of other Government establishments. What is contemplated by the statute is not a sale, but a transfer of property from one Government establishment to another. 18 Comp. Gen. 627, 628 (1939).

(e) Neither efficiency, administrative convenience, interchangeability, compatibility, nor uniformity with non-FPI products constitute a basis for using commercial sources, without first obtaining a waiver.

(f) FPI is the mandatory source for products irrespective of whether they are deemed to be an integral or structural part of a building; FPI is also the mandatory source for products irrespective of whether the product is acquired and/or used outside the United States or abroad (but see § 302.14(f) regarding waiver policy); FPI is also the mandatory source for all products on the Schedule, irrespective of whether they are acquired via a consolidated procurement effort. Thus, in situations where FPI provides some, although not all, of the products which are offered in a packaged solicitation, FPI remains mandatory for those products on its Schedule, and a waiver must be obtained pursuant to procedures in this subpart before products on FPI's schedule can be purchased pursuant to a consolidated procurement.

(g) FPI's status as a mandatory source extends to contractors when they provide products for Government use. The contracting activity shall insert in solicitations and contracts a clause which identifies the products which must be purchased from FPI as a mandatory source. Also, such contractors may use FPI as a supply source for services and non-mandatory products.

§ 302.10 Provision of products as a non-mandatory source.

(a) FPI may offer its products on a competitive basis and not as a mandatory source. Thus, for example, it may choose to follow competitive procedures in responding to a solicitation in the Commerce Business Daily (CBD) for a product which it currently does not produce (i.e., a ''new product'' as defined *infra*). In this situation, provided that FPI in no way relies on its status as a mandatory source, FPI need not seek Board approval pursuant to the guidelines process to produce this product. The public will be made aware of FPI's decision to competitively bid for a product by the publication of a notice in the CBD. Once a new product is produced by FPI competitively, the product will remain a competitive product, and will not be added to the Schedule as a mandatory source item. Whatever share of the market FPI acquires on a competitive basis will be deemed to be a reasonable share of the market.

(b) FPI may also waive its mandatory source status for certain products which it currently produces, provided such initiatives are announced to the public for comment and approved by the Board. Non-mandatory products also include products which are provided by FPI as a preferential source of supply pursuant to § 302.12, and products which are provided to such agencies as the U.S. Postal Service, which by statute are not subject to FPI's mandatory source of supply.

§ 302.11 Provision of services to the commercial market.

FPI may offer services to the commercial market, as approved by its Board of Directors.

§ 302.12 Preferential source.

(a) *Products.* FPI is a preferential source of supply where it is not a mandatory source. Thus, for example, products which are offered to the U.S. Postal Service, which agency by statute is exempted from FPI's mandatory source, may be purchased from FPI directly, without the contracting activity going through competitive procurement procedures.

(b) *Services.* FPI is a preferential, though non-mandatory, source of services for all Government departments and agencies. This means that services may be purchased from FPI without a contracting activity going through competitive procurement procedures.

§ 302.13 ''Escape-Proof'' guarantee.

FPI is committed to the complete and continual satisfaction of its customers. If at any time an item or service that FPI has provided does not entirely meet the expectations of the customer, FPI will promptly repair or replace it, entirely at the expense of FPI. For information on this warranty, contact the Customer Service Center at (800) 827–3168.

§ 302.14 Waiver policy.

(a) When a contracting office or activity believes a product on FPI's Schedule does not meet the customer's requirements, but that similar products from a commercial source will, and the contracting activity wishes to purchase the product from a commercial source, it must submit a request for a waiver to FPI and obtain a waiver prior to purchasing the product from the commercial source.

(b) A waiver request should include:

(1) A description of the product for which the waiver is requested;

(2) The justification for seeking a waiver, including specifics concerning price, quantity, and delivery date where such information is relevant to the waiver request;

(3) The name and title of the appropriate contact person, as well as the complete mailing address, phone and fax numbers, and e-mail address when available.

(c) Waivers will not ordinarily be given based on price, where FPI's product does not exceed current market price as determined by FPI.

(d) Waivers based on delivery will not ordinarily be granted when FPI's delivery schedule is consistent with deliveries for comparable products on the Federal Supply Schedule or under standard commercial practices. Delivery requirements inconsistent with those referenced on the GSA Federal Supply Schedule require written certification from the contracting officer. Thus,

where expedited delivery is needed, a written statement from the contracting activity is required, providing the reasons and attesting to the fact that the products required are available from an alternative source in the time frame required.

(e) When a waiver is requested based on an assertion that FPI's product will not perform to standards or does not represent best value, or in some other way does not meet the specifications of the customer, the contracting activity must provide, in writing, details describing the non-conforming characteristics of the FPI product compared to the product from a commercial source.

(f) Waivers are granted or denied on a case-by-case basis. Class waivers are not usually issued, except when the product is not available from FPI. However, FPI has granted a class waiver for all supplies that are acquired for use outside the United States when these supplies are both manufactured by and purchased from sources outside the United States.

(g) Generally, considerations of aesthetics are not an acceptable basis for a waiver. However, exceptions may be made, and waivers granted, for example, to achieve ''match'' with products that will be located in proximity to the required products.

(h) In order to avoid a situation where FPI exercises its status as a mandatory source after a commercial vendor has gone through the effort and expense of preparing a bid package, FPI will exercise special care with regard to procurements that inadvertently have been announced in the *Commerce Business Daily* (CBD). Although solicitations for products manufactured by FPI should not appear in the CBD without first obtaining a waiver from FPI, occasionally, through error, such solicitations do appear. The FAR (48 CFR 5.203) requires a 15 day waiting period between the date of the CBD synopsis and the issuance of solicitations. Therefore, FPI will ordinarily exercise its mandatory source status by requesting cancellation of the solicitation during this 15 day interval.

(i) Waivers will not be required where public exigency requires immediate delivery or performance. However, purchase from commercial sources pursuant to this provision must be simultaneously reported to FPI, with an explanation of the emergency necessitating the commercial procurement. The emergency must not be brought about by poor planning nor otherwise due to circumstances that could have been avoided through the exercise of reasonable prudence.

(j) Waiver decisions will ordinarily be issued within seven (7) working days from the date of the request, once all information necessary to make a decision is provided to FPI. Project level waiver requests may require longer to process because of their complex nature. Where the requester requires a reply in less than seven (7) working days, the requester should explain the reasons.

§ 302.15 Appeals to waiver denials.

If the waiver request is denied, the order must be awarded to FPI unless the decision is overturned on appeal. All appeals must be made as a matter of first instance to the FPI Ombudsman. The appeal should include the 7-digit waiver identification number found on the waiver denial letter, together with any supplemental information on why the waiver denial should be reversed. Appeals should ordinarily be filed within 7 working days of the notification of a waiver denial. Decisions of the Ombudsman will ordinarily be issued within 7 working days from the date of the appeal. A further appeal may be taken by either party under 18 U.S.C. 4124(b).

§ 302.16 Pricing.

(a) By federal law, the prices of FPI's products cannot exceed the current market price. The determination of what constitutes the current market price, the methodology employed to determine the current market price, and the conclusion that a product of FPI does not exceed that price is the responsibility of FPI to determine, subject to dispute under 18 U.S.C. 4124(b). FPI determines market price one of three ways:

(1) When a comparable product is available from private sector manufacturers, a review of commercial catalog prices will be used to establish a ''range'' for current market price;

(2) Where a comparable product cannot be identified, current market price is established through negotiating a price based on cost, including applicable overhead, plus a margin for earnings; and

(3) Where a purchasing activity executes ''concurrent buys'' (i.e., where the purchasing activity simultaneously purchases identical products from both FPI and a commercial supplier), FPI will provide the product at a comparable price, and at terms and conditions comparable to those provided by the commercial supplier.

(b) General Services Administration's Federal Supply Schedule (FSS) is relevant to, but not necessarily determinative of, the current market price for a product, as it may not duplicate in all features the FPI product and FPI's costs. In many cases, there will be no exact comparability between FPI's product and a commercial product, and thus adjustments will be required to determine the comparable current market price. Factors to be considered in determining the price range will typically include similarity of materials, methods and costs of construction, product durability, presence of ancillary features, extent of warranties and nature of the market. Data collected by general market surveys do not establish current market price, but may be provided to FPI to be factored into its determination of current market price. A price established by FPI utilizing one of the methodologies identified in this section fulfills the obligations of a contracting officer to obtain a fair and reasonable price under FAR (e.g. 48 CFR part 15).

§ 302.17 Industry involvement guidelines procedures.

The following steps will be followed whenever FPI is considering producing a new product (§ 302.18(b)) or significantly expanding production of an existing product (§ 301.18(d)).

(a) Parties who are known to have an interest in a potential proposal by FPI to produce a new specific product or significantly expand in the production of an existing product will be contacted prior to the drafting of any market impact study to obtain relevant information for purposes of developing a comprehensive and fair study. The information sought may include, but is not limited to, how a specific product is defined, size of the market, future market trends, and dependence of industry providers on the federal market.

(b) All proposals to produce a new product or to significantly expand the production of an existing product shall be announced in the CBD, and a copy of the announcement shall be mailed to known interested parties.

(c) The announcement will state that interested parties may obtain a copy of the study which analyzes the impact, if any, on the private sector resulting from the proposed production initiatives by writing to the Manager, Planning, Research, and Activation, Federal Prison Industries, 320 First Street, NW, Washington, DC 20534. The announcement will further state that comments on the study should be submitted in writing to the Manager at the same address. It will further state that comments are due no later than 45 days from the date of the announcement and that the comments should address the issue of what percentage, if any, of

the government market for the specific product constitutes a reasonable share of the market. All comments related to definition of the product, determination of the size of the market, impact on the private sector, and study methodology must be submitted at this time, to allow time for adequate consideration of these comments prior to FPI's dissemination of its final study and recommendations. Failure to provide this information in a timely manner may result in the information not being considered or being given less weight by the Board or not being considered at all.

(d) FPI will contact known trade associations representing manufacturers of the relevant product, provide them with a copy of the announcement and the market analysis, and request their written and oral comments in an attempt to arrive at a mutually agreeable percentage figure as to what constitutes a reasonable share of the market. FPI will also provide a copy to the appropriate labor representatives. The same time frames apply as in paragraph (c) of this section.

(e) Public comments including all attachments should be kept as brief as possible and, without Board permission, no public submission may exceed twenty-five (25) pages.

(f) A recommendation will be prepared by FPI to be provided to the Board of Directors on what constitutes a reasonable market share for the specific product in question. The recommendation will address all comments which are timely and relevant.

(g) A copy of the written comments submitted in response to the announcement, FPI's responses to the comments, and FPI's final recommendation to the Board of Directors shall be made available to commenters who filed a timely submission. The material will be made available to the commenters no less than forty-five (45) days before the date of the Board meeting at which the proposal for production of the specific product at issue will be considered. In addition, all commenters will be advised, in an appropriate manner, of the date, time, and location of the Board meeting at which the proposal will be discussed, and advised of the opportunity to address the Board in person.

(h) A final submission for the sole purpose of commenting on FPI's recommended production levels may be provided by commenters to the Board for its consideration. The final submission, including any attachments, should be as brief as possible and, without Board permission, may not exceed ten (10) pages. Comments related to the study methodology, i.e., how the specific product is defined, determination of the size of the market, and impact of FPI on the private sector, should be submitted within the 45 day review period after announcement of the study in the CBD (see paragraph (c) of this section), and not at this stage of the process, in order to be given due consideration by the Board. This final submission should be sent to the Manager, Planning, Research and Activation, for transmittal to the Board. If a commenter wishes to appear at the Board meeting to make a statement, that request should be made on the first page of the final submittal, together with the names of the individuals desiring to appear before the Board.

(i) All final submittals, together with any request to appear before the Board, must be received by the Manager at least fifteen (15) days in advance of the Board meeting.

(j) The following rules will apply at the in-person presentation:

(1) In order to accommodate the largest number of commenters, and to assure access by the Board to the fullest array of comments and opinions concerning expansion proposals by FPI, as a general rule hearings will be held in Washington, DC. However, the Board reserves the right to determine that a hearing should be held in a location other than Washington, DC, provided that sufficient notice is given to the public. The presentation to the Board is open to the public. However, the hearing may be closed, or other safeguards taken, where the Board determines that proprietary information must be safeguarded, or for other good and sufficient reason(s).

(2) A maximum of 30 minutes will be allotted to each commenter for presentation to the Board, unless the Board extends the time;

(3) The record before the Board at the time of the presentation is limited to the market study, comments and materials submitted in a timely manner in response to the market study, FPI's recommendations, and materials submitted by commenters in response to FPI's recommendations. No new documentation or arguments from commenters should be presented at the presentation that have not been submitted in compliance with the rules in this section, unless permitted by the Board. The Board reserves the right to exclude from consideration or give less weight to information which was not submitted in compliance with this section.

(4) The Chairman of the Board will preside at the hearing and impose such further rules as are reasonable to assure a full and orderly presentation, covering such matters as who may address the Board, the order in which presentations are made, what documents will constitute the record, what issues are relevant, and any questions concerning how much time is to be allotted to each presentation. The Federal Rules of Civil Procedure and formal rules of evidence will not be followed.

(5) The Board members may direct questions to a commenter to elicit further information, and may request that additional material be provided for the record.

(6) The proceedings will be recorded and a transcript made available at the requestor's expense.

(k) The Board will determine whether a proposed new product may be produced or whether a proposed expansion of an existing product should be approved, and what the reasonable market share is with regard to the specific product in question. In determining the reasonable market share for a specific product, the Board will balance the interests of the Corporation with the interests of the affected private sector, employing the criteria spelled out in the relevant statutes, legislative history, and corporate regulations.

(l) The decision of the Board will be made by majority vote. In the case of a tie, the position of the group which includes the Chairman will prevail.

(m) The decision, together with the reasons for the decision, will be published in the CBD within 10 days of the date of the Board's decision.

(n) Any request for exception to the provisions of this section shall be made to the Board and shall be considered only in compelling circumstances. Requests should be addressed to Chairman, Board of Directors, Federal Prison Industries, Inc., 320 First Street, NW, Washington, DC 20534.

§ 302.18 Definitions and application of significant terms in product development guidelines process.

(a) Specific product. (1) A ''specific product'' refers to the aggregate of items which are similar in function (e.g., bags and sacks), or which are frequently purchased for use in groupings (e.g., dormitory and quarters furniture) to the extent provided by the most current Federal Supply Classification (FSC) Code. Specific products will equate to the most current 4-digit FSC Code, published by the General Services Administration, Federal Procurement Data Center (FPDC). As a general rule, products will be deemed to be different specific products if they are identified by a distinct 4-digit FSC code.

(2) The following standards will be used to determine how ''items'' should be treated:

(i) Items classified within the same 4-digit FSC code will be presumed to comprise a single specific product (unless otherwise determined by FPI, or with input from the relevant industry).

(ii) The predominant material of manufacture (e.g., nylon vs. canvas) will not ordinarily be a factor in defining an item as a separate specific product. Material will be considered as part of routine review in determination of what constitutes a specific product.

(iii) In certain instances, with approval of its Board of Directors, FPI may combine FSC codes where multiple FSC's comprise a particular industry. In requesting the Board to combine FSC's, FPI will give careful consideration, and be especially sensitive to, companies that manufacture products (such as various items of apparel) in multiple FSC codes. Moreover, situations will be avoided where FPI would have to request Board approval of production and/or expansion in several ''specific products'' (e.g., office seating, case goods, and systems furniture), each of which often involves many of the same companies within a single potentially affected industry (e.g., office furniture).

(iv) The rationale for any proposed combining of FSC's will be published by FPI in the CBD to seek input from the potentially affected industry. Input received in its submission will be forwarded by FPI to the Board of Directors for consideration and final determination.

(v) In some instances, an item may be considered separate from another product in the same 4-digit FSC category, if its function differs substantially. In such cases, the 4-digit Standard Industrial Classification (SIC) code may be used as a back-up measure to more accurately define the product.

(vi) SIC codes will be used at the 4-digit level to determine the size of the domestic market for a particular product. For purposes of product definition in the domestic market, FPI will combine 4-digit SIC codes when the data suggests the product under examination may encompass several different 4-digit SIC codes, with no substantial difference in the product (e.g., men's vs. women's apparel).

(b) New product. A ''new product'' is a ''specific product'' which FPI has not manufactured or produced within the past five years. In cases where it has been determined that more than one specific product exists within a 4-digit FSC, the 4-digit SIC code will be used as a secondary indicator to determine whether the product is ''new.'' In such cases, a new product will be defined as a ''specific product'' in the four-digit SIC which FPI has not produced within the past five years.

(c) ''Good Faith'' CBD announcements.

(1) There may be circumstances in which FPI plans to produce items that FPI does not consider to be a new product, but which an affected party may reasonably construe to be a new product. In these circumstances, the items will be announced for comment in the CBD. The purpose of this provision is to give private industry an added level of input into such decisions made by FPI, since it is not possible to anticipate every possible situation or question that could arise within the outlined definition.

(2) The parameters for publishing such internal decisions that are made and announced subject to this paragraph (c) will be as follows: items that a reasonable person could construe to be a product separate and distinct from another item which FPI is making or recently made would be subject to announcement even though their function is similar. As an example, the production of extreme cold weather trousers would be announced, although FPI already produces bullet resistant fragmentation vests, and both are items of protective clothing.

(3) Items that are essentially the same product, or those that are variations of an existing FPI product (e.g., a new style of seating) would not be subject to announcement of any kind. However, FPI will resolve any question as to whether to announce in favor of announcement.

(4) In submitting comments to FPI, the following procedures will apply:

(i) Comments will be due within 21 days of the date of publication;

(ii) Relevant comments will focus on and address why the item should be considered a new product, separate and distinct from a similar item currently being produced by FPI. Comments may include such factors as: the manufacture of the item involves substantially different material and processes; companies that produce this item specialize in manufacturing only that item; the manufacturing processes are unique and are not easily adaptable to produce other similar items;

(iii) While the primary purpose of the comment provision will be to determine if an item should be defined as a new product, comments related to market share and/or the impact that such a production decision may have on the firm will also be considered to the degree they are relevant;

(iv) All comments received in response to these announcements will be considered by FPI.

(5) The commenter will be advised whether FPI decides to go through the guidelines process.

(6) As always, any interested party has a right to raise any question at any time with the Board of Directors (see § 302.19), and thus may appeal to FPI's Board of Directors any issue or decision relating to whether a product is a new product. However, pending such review, FPI may proceed with its plans in accordance with the decision as announced in this process described in this paragraph (c), unless and until the decision is reversed.

(d) ''Significant expansion of an existing product''.

(1) Proposed production increases by FPI which may increase its market share will be reviewed during the Corporation's annual planning cycle and be deemed a significant product expansion under the following circumstances:

(i) Sales (measured in constant dollars) for the specific product will increase by more than 10 percent, or $1 million, in any given year, whichever is greater; or

(ii) In any case where FPI's market share is greater than 25%, any increase in FPI's market share resulting from an increase in FPI production would be deemed to be significant for purposes of triggering the guidelines process.

(2) When either criterion is met, an analysis of the federal government market for the specific product will be conducted and an estimate of FPI's current and projected market share will be developed. The production increase will be deemed ''significant'' when FPI's market share position changes in accordance with the following sliding scale: If FPI currently has a 15% or less share of the federal market, any increase in market share would be permissible, provided that the particular increase does not result in FPI exceeding a 15% market share. If FPI has a market share greater than 15%, but less than 20%, FPI could increase its market share to 20%, before the increase would be deemed to be significant. If FPI has a market share of greater than 20%, but less than 25%, FPI could increase its market share to 25%, before the increase would be deemed to be significant. The allowable increase in market share from 15 to 20% in one year, should not allow FPI (assuming its sales increase by more than 10%) to increase its share again from 20 to 25% in a subsequent year without going through the guidelines process.

(3) Market shares will be calculated on the basis of FSC's for planning purposes. If based on initial assessment, it is determined that a comprehensive impact study, and Board approval, is likely to be required, a comprehensive analysis of market share will be undertaken to fully assess whether the guidelines process should be initiated.

(4) Situations where FPI production remains constant, but market share increases as a result of other factors, including market changes, will not require FPI to initiate the guidelines process. The fact that 25% may ''trigger'' the guidelines does not necessarily mean the Board of Directors cannot approve an FPI production level resulting in a federal market share above 25%. The prior three years' data will be used to determine the share of the federal government market, to ensure that annual fluctuations are taken into account and normalized. FPI may produce at the rate of previously achieved annual sales levels, adjusted for inflation, without initiating the guidelines process.

(5) In cases where FPI sales inadvertently or insubstantially exceed Board authorized levels, FPI will make every effort to adjust its production by a corresponding amount the following year. If FPI plans call for continued growth, it will invoke the guidelines process without delay and seek Board approval of future production levels. Should the Board decide on a production level lower than that which FPI already achieved, FPI will adjust its future plans and, if necessary scale back, to comply with the Board's decision.

(6) In cases of extreme public exigency, such as national disaster or national defense emergency, FPI may exceed guidelines thresholds, provided FPI receives specific orders or requests from senior Department of Defense and/or Executive Branch officials. Increased sales resulting from national exigencies will not be considered a violation of guidelines ceilings in the year which they occurred. In such cases, the higher production levels achieved by FPI will be temporary, and will not be used as part of FPI's baseline for future calculations of significant expansion. Such exceptional events will be subject to approval by FPI's Chief Operating Officer, with concurrence of FPI's Board of Directors.

(7) Subject to other provisions noted in this paragraph (d), FPI's sales for fiscal year 1997 will be utilized as the base year for future application.

§ 302.19 General comments on FPI business operations.

(a) Any interested party having any general comment concerning the business operations of FPI may write to the Chief Operating Officer, or to the Chairman of the Board of Directors, and bring such matters to the attention of either or both officials. Where appropriate, a response shall promptly be made. The Board shall be kept advised of all comments and responses.

(b) Correspondence should be addressed as follows:

(1) Chief Operating Officer, Federal Prison Industries, Inc., 320 First Street, NW, Washington, DC 20534, Attn: General Comments; or

(2) Board of Directors, Federal Prison Industries, Inc., 320 First Street, NW, Washington, DC 20534, Attn: General Comments.

(c) This section does not apply to inmate complaints which are properly raised through the BOP's Administrative Remedy Program (28 CFR part 542).

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Part IV

Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone: Allocation of 1999 Essential-Use Allowances; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–6217–1]

RIN 2060–AI26

Protection of Stratospheric Ozone: Allocation of 1999 Essential-Use Allowances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: With this action, EPA is allocating essential-use allowances for the 1999 control period. The United States nominated specific uses of controlled ozone-depleting substances (ODS) as essential for 1999 under the *Montreal Protocol on Substances that Deplete the Ozone Layer* (Protocol). The Parties to the Protocol subsequently authorized specific quantities of ODS for 1999 for the uses nominated by the United States. Essential-use allowances permit a person to obtain controlled ozone-depleting substances as an exemption to the January 1, 1996 regulatory phaseout of production and import. Essential-use allowances are allocated to a person for exempted production or importation of a specific quantity of a controlled substance solely for the designated essential purpose.

DATES: This rule is effective January 7, 1999.

FOR FURTHER INFORMATION CONTACT: The Stratospheric Ozone Protection Hotline at 1–800–296–1996 or Tom Land, U.S. Environmental Protection Agency, Stratospheric Protection Division, Office of Atmospheric Programs, 6205J, 401 M Street, SW., Washington, DC, 20460, 202–564–9185.

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I. Background

The Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol) sets specific deadlines for the phaseout of production and importation of ozone depleting substances (ODS). At their Fourth Meeting in 1992, the signatories to the Protocol (the Parties) amended the Protocol to allow exemptions to the phaseout for uses agreed by the Parties to be essential. At the same Meeting, the Parties also adopted Decision IV/25, which established both criteria for determining whether a specific use should be approved as essential and a process for the Parties to use in making such a determination.

The criteria for an essential use as set forth in Decision IV/25 are the following:

''(1) That a use of a controlled substance should qualify as 'essential' only if:

(i) It is necessary for the health, safety or is critical for the functioning of society (encompassing cultural and intellectual aspects); and

(ii) There are no available technically and economically feasible alternatives or substitutes that are acceptable from the standpoint of environment and health;

(2) That production and consumption, if any, of a controlled substance for essential uses should be permitted only if:

(i) All economically feasible steps have been taken to minimize the essential-use and any associated emission of the controlled substance; and

(ii) The controlled substance is not available in sufficient quantity and quality from existing stocks of banked or recycled controlled substances, also bearing in mind the developing countries' need for controlled substances.''

Decision IV/25 also sets out the procedural steps for implementing this process. It first calls for individual Parties to nominate essential-uses. These nominations are then to be evaluated by the Protocol's Technology and Economic Assessment Panel (TEAP or the Panel) which makes recommendations to representatives of all Protocol Parties. The final decision on which nominations to approve is to be taken by a meeting of the Parties.

The initial cycle of implementing this Decision has been completed in the context of halons which were phased out of production at the end of 1993. This initial timetable separated nominations for halons from those for other ozone-depleting substances. EPA issued a **Federal Register** document requesting nominations for essential uses of halons (February 2, 1993; 58 FR 6786). In response, the Agency received over ten nominations, but was able to work with applicants to resolve their near-term requirements. As a result, the U.S. did not nominate any uses for continued halon production in 1994. About a dozen other nations put forth nominations which were reviewed by the Technical and Economic Assessment Panel. Because the Panel determined that in each case alternatives existed or that the existing supply of banked halons was adequate to meet near-term needs, it did not recommend approval of any of the nominations. In November of 1993, at the Fifth Meeting, the Parties unanimously adopted the recommendation of the Panel not to approve any essential uses for the production or consumption of halons in 1994.

EPA issued a second document for essential-use nominations for halons on October 18, 1993 (58 FR 53722). These nominations covered possible production of halons in 1995 for essential uses. In response to this inquiry, EPA received no nominations.

Only one nomination (from France) was received by the TEAP for production and consumption of halons for an essential use in 1995. The TEAP did not recommend approval of this nomination.

EPA also issued a **Federal Register** document requesting nominations for essential-use applications which would need to continue beyond the 1996 phaseout of consumption and production allowances for CFCs, methyl chloroform, carbon tetrachloride, and hydrobromofluorocarbons (May 20, 1993, 58 FR 29410). EPA received 20 applications in response to this document. For several of these applications, EPA determined that the criteria contained in Decision IV/25 had not been satisfied. For example, two applications sought CFCs for servicing existing air-conditioning equipment. EPA rejected these applications on the basis that if all economically feasible steps were taken prior to the 1996 phaseout, then adequate supplies of banked and recycled CFCs should be available. However, in rejecting these nominations, the United States noted that servicing existing air-conditioning and refrigeration equipment remains a major challenge to the successful transition from the use of CFCs and that a future nomination in this area might be necessary if a combination of retrofits, replacements, recycling, recovery at disposal, and banking do not adequately address these needs.

Of the responses to the **Federal Register** request for essential-use applications, the United States submitted essential-use nominations to the Protocol Secretariat for the following uses of CFCs: metered dose inhalers and other selected medical applications; rocket motor assembly for the Space Shuttle; aerosol wasp killers; limited use in a specified bonding agent and polymer application; and a generic application for laboratory uses under specified limitations. (Letter from Pomerance to UNEP, September 27, 1993).

Nominations from the U.S. and other countries for over 200 specific uses were submitted to the Montreal Protocol Secretariat and provided to the Technical and Economic Assessment Panel for review. In March 1994, the Panel issued the ''1994 Report of the Technology and Economic Assessment Panel.'' The Report includes the Panel's recommendations for essential-use production and consumption exemptions. The Panel recommended that essential-use exemptions be granted for nominations of: methyl chloroform in solvent bonding for the Space Shuttle; CFCs used in metered dose inhalers; and specific controlled substances needed for laboratory and analytical applications. For each of the other nominations submitted, the TEAP determined that one or more of the criteria for evaluating an essential-use had not been satisfied. For example, in the case of several of the U.S. nominations, the report states that alternatives are available and therefore the essential-use exemption is not warranted.

In every year since 1994, the Parties have reviewed recommendations by the Technology and Economic Assessment Panel and made final decisions on essential-use authorizations. Today's action follows decisions taken by the Parties after considering recommendations by the TEAP in 1997 and 1998.

In 1993, the Parties to the Protocol modified the timetable for submission of essential-use nominations to combine both halons and all the other class I controlled substances (except methyl bromide) and to reduce the overall length of time between nomination and decision. According to Decision V/18, essential-use nominations for halon consumption and production for 1995 and beyond, and essential-use nominations for all the other class I controlled substances (except methyl bromide) for 1997 and beyond, must be submitted to the Secretariat prior to January 1st of the year prior to the year for which production and consumption is being sought. The Parties again revised the timetable for essential-use nominations in Decision VIII/9 requiring submission by 31 January in the year in which decisions would be taken for subsequent years. EPA revised the domestic schedule accordingly so a **Federal Register** document calling for essential-use applications for class I controlled substances for future years is published prior to the Protocol deadline for submission to the Ozone Secretariat.

Decision V/18 directed the Technology and Economic Assessment Panel to develop a ''handbook on essential-use nominations'' (Handbook). The July 1994 Handbook contained forms and instructions for how to apply for an essential-use exemption. Subsequent decisions by the Parties to the Protocol created additional criteria for essential-use authorizations now reflected in the August 1997 Handbook on Essential-use Nominations. The Handbook may be obtained from the Stratospheric Protection Division, U.S. Environmental Protection Agency or the Ozone Secretariat of the Montreal Protocol in Nairobi. The Handbook can also be downloaded from the TEAP website at: http://www.teap.org/html/teap__reports.html.

II. Allocation of 1999 Essential-Use Allowances

In today's action, EPA is allocating essential-use allowances for the 1999 control period to entities listed in Table I for exempted production or import of the specific quantity of class I controlled substances solely for the specified essential-use.

TABLE I.—ESSENTIAL USES AGREED TO BY THE PARTIES TO THE PROTOCOL FOR 1999 AND ESSENTIAL-USE ALLOWANCES

Company/entity	Class I controlled substance	Quantity (metric tonnes)
(i) Metered Dose Inhalers for Treatment of Asthma and Chronic Obstructive Pulmonary Disease		
International Pharmaceutical Aerosol Consortium (IPAC)—Armstrong Laboratories, Boehringer Ingelheim Pharmaceuticals, Glaxo Wellcome, Rhone-Poulenc Rorer, Schering Corporation, 3M.	CFC–11	899.5
	CFC–12	2157.4
	CFC–114	183.6
Medisol Laboratories, Inc	CFC–11	67.3
	CFC–12	115.3
	CFC–114	9.6
Aeropharm Technology, Inc	CFC–11	80.1
	CFC–12	160.2
Sciarra Laboratories, Inc	CFC–11	0.5
	CFC–12	1.5
	CFC–114	0.5
(ii) Cleaning, Bonding and Surface Activation Applications for the Space Shuttle Rockets and Titan Rockets		
National Aeronautics and Space Administration (NASA)/Thiokol Rocket	Methyl Chloroform	56.7
United States Air Force/Titan Rocket	Methyl Chloroform	3.4
(iii) Laboratory and Analytical Applications		
Global Exemption (Restrictions in Appendix G Apply)	All Class I Controlled Substances (except Group VI).	[1]

[1] No quantity specified.

The International Pharmaceutical Aerosol Consortium (IPAC) consolidated requests for an essential-use exemption to be nominated to the Protocol as an agent of its member companies for administrative convenience. By means of a confidential letter to each of the companies listed above, EPA will allocate essential-use allowances separately to each company in the amount requested by it for the nomination.

Applications submitted by the entities in Table I requested class I controlled substances for uses claimed to be essential during the 1999 control period. The applications provided information in accordance with the criteria set forth in Decision IV/25 of the Protocol and the procedures outlined in the ''Handbook on Essential-Use Nominations.'' The applications request exemptions for the production and import of specific quantities of specific class I controlled substances after the phaseout as set forth in 40 CFR 82.4. The applications were reviewed by the U.S. government and nominated to the Protocol Secretariat for analysis by the Technical and Economic Assessment Panel (TEAP) and its Technical Option Committees (TOCs). The Parties to the Montreal Protocol approved the U.S. nominations for essential-use exemptions during the Ninth Meeting in 1997 (Decision IX/18). Today's action allocates essential-use allowances to United States entities based on nominations decided upon by the Parties to the Protocol.

The 1999 global essential-use exemption for analytical and laboratory applications published in today's rule does not alter the strict requirements both in 40 CFR 82.13 and in appendix G to 40 CFR part 82, subpart A. The restrictions for the global laboratory and analytical essential-use exemption listed in appendix G include requirements regarding purity of the class I controlled substances and the size of the containers. In addition, there are detailed reporting requirements in § 82.13 for persons that take advantage of the global laboratory and analytical essential-use exemption for class I controlled substances. The strict requirements are established because the Parties to the Protocol, and today's rule, do not specify a quantity of essential-use allowances permitted for analytical and laboratory applications, but establish a global essential-use exemption, without a named recipient.

Any person obtaining class I controlled substances after the phaseout under the essential-use exemptions in today's action is subject to all the restrictions and requirements in other sections of 40 CFR part 82, subpart A. Holders of essential-use allowances or persons obtaining class I controlled substances under the essential-use exemptions must comply with the record keeping and reporting requirements in § 82.13 and the restrictions in Appendix G.

III. Response to Comments

EPA received one comment pointing out that, in accordance with the direct final rule published on August 4, 1998 (63 FR 41625) and the related subsequent notice on October 5, 1998 (63 FR 53290), the regulatory citation in the propose rule published on November 20, 1998 (63 FR 64437) should be changed from § 82.4(r)(2) to § 82.4(t)(2). With this action, EPA makes this appropriate change to the paragraph citation to be consistent with changes made in prior rules.

IV. Summary of Supporting Analysis

A. 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 by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Section 204 of the UMRA requires the Agency to develop a process to allow elected state, local, and tribal government officials to provide input in the development of any proposal containing a significant Federal intergovernmental mandate.

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.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. Because this rule imposes no enforceable duty on any State, local or tribal government it is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments; therefore, EPA is not required to develop a plan with regard to small governments under section 203. Finally, because this rule does not contain a significant intergovernmental mandate, the Agency is not required to develop a process to obtain input from elected state, local, and tribal officials under section 204.

B. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide 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 final 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.

C. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is ''significant'' and therefore subject to 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, or 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 entitlements, grants, user fees, or loan programs or 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.

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.

D. Paperwork Reduction Act

This action does not add any information collection requirements or increase burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Office of Management and Budget (OMB) previously approved the information collection requirements contained in the final rule promulgated on May 10, 1995, and assigned OMB control number 2060–0170 (EPA ICR No. 1432.16).

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.

E. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide 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 or matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. The final rule does not impose any enforceable duties on Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

F. 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 would not have a significant impact on a substantial number of small entities since essential-use allocations are granted to large pharmaceutical manufacturing corporations and not small entities such as small businesses, not-for-profit enterprises or small governmental jurisdictions.

EPA concluded that this final rule would not have a significant impact on a substantial number of small entities, therefore, I hereby certify that this action will not have a significant economic impact on a substantial number of small entities. This rule, therefore, does not require a regulatory flexibility analysis.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health and safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 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 standards. This final rule does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

I. Submission to Congress and the General Accounting Office

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).

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Exports, Hydrochlorofluorocarbons, Imports, Ozone layer, Reporting and recordkeeping requirements.

Dated: December 31, 1998.

Carol M. Browner,

Administrator.

Accordingly, 40 CFR part 82 is amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

Subpart A—Production and Consumption Controls

2. Section 82.4(t)(2) is amended by revising the table to read as follows:

§ 82.4 Prohibitions.

* * * * *

(t) * * *

(2) * * *

TABLE I.—ESSENTIAL-USES AGREED TO BY THE PARTIES TO THE PROTOCOL FOR 1999 AND ESSENTIAL-USE ALLOWANCES

Company/entity	Class I controlled substance	Quantity (metric tonnes)
(i) Metered Dose Inhalers for Treatment of Asthma and Chronic Obstructive Pulmonary Disease		
International Pharmaceutical Aerosol Consortium (IPAC) [1]—Armstrong Laboratories, Boehringer Ingelheim Pharmaceuticals, Glaxo Wellcome, Rhone-Poulenc Rorer, Schering Corporation, 3M.	CFC–11	899.5
	CFC–12	2157.4
	CFC–114	183.6
Medisol Laboratories, Inc	CFC–11	67.3
	CFC–12	115.3
	CFC–114	9.6
Aeropharm Technology, Inc	CFC–11	80.1
	CFC–12	160.2
Sciarra Laboratories, Inc	CFC–11	0.5
	CFC–12	1.5
	CFC–114	0.5
(ii) Cleaning, Bonding and Surface Activation Applications for the Space Shuttle Rockets and Titan Rockets		
National Aeronautics and Space Administration (NASA)/Thiokol Rocket	Methyl Chloroform	56.7
United States Air Force/Titan Rocket	Methyl Chloroform	3.4
(iii) Laboratory and Analytical Applications		
Global Exemption (Restrictions in Appendix G Apply)	All Class I Controlled Substances (except Group VI).	([2])

[1] The International Pharmaceutical Aerosol Consortium (IPAC) consolidated requests for an essential-use exemption to be nominated to the Protocol as an agent of its member companies for administrative convenience. By means of a confidential letter to each of the companies listed above, EPA will allocate essential-use allowances separately to each company in the amount requested by it for the nomination.

[2] No quantity specified.

* * * * *

[FR Doc. 99–324 Filed 1–6–99; 8:45 am]

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Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.